No. 7342

United States Circuit Court of Appeals

For the Ninth Circuit.

SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation, and SOUTHERN PACIFIC COMPANY, a Corporation,

Appellants,

SOLOMON-WICKERSHAM COMPANY, a Corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Arizona.

Parker Printing Company, 545 Sansome Street, San Francisco.

No. 7342

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index Page

Index

Index Page

Index

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*Page numbering appearing at the foot of page of original certified Transcript of Record

In the District Court of the United States, in and for the District of Arizona.

No. L-763-Phx.

SOLOMON-WICKERSHAM COMPANY, a corporation,

Plaintiff,

vs.

SANTA MARIA VALLEY RAILROAD COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation,

Defendants.

COMPLAINT AT LAW.

Reparation on account of excessive freight rates by Order of Interstate Commerce Commission.

Comes now the above named plaintiff and for cause of action against the above named defendants, complains and alleges:

I.

That at all times hereinafter mentioned the plaintiff, Solomon-Wickersham Company, was and now is a corporation, organized and existing under the laws of the State of Arizona, and doing business under and by virtue of the laws of the State of Arizona;

II.

That at all times hereinafter mentioned the Santa Maria Valley Railroad Company and Southern Pacific Company were, and now are, railroad corporations, engaged in the operation of railroads and railway lines for the transportation of freight in interstate commerce.

III.

That prior to the filing of this complaint this plaintiff filed its petition and complaint with and before the Interstate Commerce Commission of the United States, alleging that the freight rates charged and collected upon 31 car load shipments of sugar, originating at Dyer, Oxnard, *Sprecles,* San Francisco, Crockett and Betteravia, State of California, and destined to the complainant at Bowie, State of Arizona, were unjust, unreasonable and excessive [4] as to the said complainant, and asking for reparation upon said shipments for the amounts that the rates charged by the defendants upon said shipments exceeded the rates which the Commission might determine should have been charged upon said shipments; that thereafter the defendants filed their answers to said complaint with and before the Interstate Commerce Commission, said cause being docketed under Docket No. 14140;

IV.

That said Interstate Commerce Commission made, issued, published and filed its report and findings of fact on March 12, 1928, in which said Commission found that the rates of 86½¢, 96¢ and 96½¢ per hundred pounds which had been charged by said defendants against said plaintiff upon said 31 carload shipments of sugar from said points of origin in California to said point of destination in Arizona were unjust, unreasonable and excessive as to the plaintiff to the extent that they exceeded the following rates:

A rate of 83¢ per hundred pounds from all points of origin in Southern California to Bowie, Arizona, prior to July 1, 1922;

A rate of 93¢ per hundred pounds from all points of origin in Northern California to Bowie, Arizona, prior to July 1, 1922;

A rate of 75¢ per hundred pounds from all points of origin in Southern California to Bowie, Arizona, from and after July 1, 1922;

A rate of 84¢ per hundred pounds from all points of origin in Northern California to Bowie, Arizona, from and after July 1, 1922;

and said Commission in said report and findings further found that the plaintiff herein was entitled to reparation on all said shipments from said points of origin in California to said point of destination in Arizona, and to interest thereon, a copy of which report and findings is hereto attached, marked Exhibit A, and made a part hereof;

V.

That said Commission required and directed that said complainant should comply with Rule V. of the rules and practice of the Interstate Commerce Commission, which rule required a statement of [5] shipments, the dates thereof, the dates on which charges therefor were paid, the car initials and numbers, points of origin, the routes over which the shipments moved, the weights of shipments, the rates charged, the amounts collected, the rates which should have been charged, the amounts which should

have been collected and the difference between the charges assessed and those which the Commission found should have been collected; that in pursuance of said requirements of the Interstate Commerce Commission the complainant, plaintiff herein, did duly and properly certify a statement under said rule and transmitted the same to the defendants herein and the same was thereafter certified to by said defendants, Santa Maria Valley Railroad Company and Southern Pacific Company, and was transmitted by the said defendants to the Interstate Commerce Commission, as required by the rules and regulations of said Commission, a copy of which statement is hereto attached, marked Exhibit B, and made a part hereof;

VI.

That thereafter, and on the 14th day of April, 1930, the said Commission duly made and published its order directing and requiring the defendants herein to pay unto the said complainant, Solomon-Wickersham Company, the following sums, to-wit:

Southern Pacific Company	$1723.01
Southern Pacific Company and Santa Maria Valley Railroad Company	81.10
Total	$1804.11

together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges shown on Exhibit B, said

sums to be paid on or before the 31st day of May, 1930; said reparation being on account of the unreasonable rates charged for the transportation of said car load shipments of sugar from said points of origin in California to said point of destination in Arizona, as will more fully appear from a copy of said order hereto attached marked Exhibit C, and made a part hereof; [6]

VII.

That said defendants have failed and refused to pay said reparation or any part thereof, either principal or interest, although request and demand has heretofore been made by the plaintiff upon the defendants for the payment of said reparation;

VIII.

That by reason of said unjust, unreasonable and excessive rates and charges and payment thereof by the plaintiff, and by reason of the refusal of said defendant to pay said reparation awarded by said Commission, the plaintiff has been damaged in the sum of One Thousand Eight Hundred Four and 11/100 ($1,804.11), together with interest thereon at the rate of six per cent per annum from the respective dates of the payment of the charges as shown on Exhibit B, to and including the 31st day of May, 1930, amounting to the sum of Eight Hundred Fifty-seven and 88/100 ($857.88) Dollars, together with interest on total sum of principal and interest, to-wit: $2,661.99, at the rate of six per cent per annum from May 31, 1930, until paid, no part of which has ever been paid;

IX.

That the sum of Five Hundred ($500.00) Dollars is a reasonable attorney's fee to be allowed in this action;

WHEREFORE, plaintiff prays judgment in its favor and against the defendants for the sum of $1,804.11, together with interest thereon at the rate of six per cent per annum from the respective dates of payment up to and including May 31, 1930, amounting to the sum of $857.88, together with interest on the sum of $2,661.99, at the rate of six per cent per annum from May 31, 1930, until paid, together with the sum of $500.00 as and for attorney's fee, and for plaintiff's costs and disbursements in this action, and plaintiff prays that process may issue hereon.

SAMUEL WHITE,
Attorney for Plaintiff. [7]

EXHIBIT A

13146

Interstate Commerce Commission

No. 16742[1]

TRAFFIC BUREAU OF PHOENIX CHAMBER OF COMMERCE ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 6, 1927. Decided March 12, 1928

Rates on sugar, in carloads, from California points to destinations in Arizona and from California and Colorado points to Gallup, N. Mex., found unreasonable. Reasonable rates prescribed and reparation awarded. Original findings in Nos. 14449 and 14140 modified in part. Former reports, 95 I. C. C. 244 and 101 I. C. C. 667.

Roland Johnston, Chas. E. Blaine, Calvin L. Blaine, F. W. Pullen, and R. S. Sawyer for complainants.

James R. Bell, G. H. Muckley, James E. Lyons, H. H. McElroy, A. Burton Mason, J. L. Fielding, Del W. Harrington, E. W. Camp, Platt Kent, F. W. Mielke, and Berne Levy for defendants.

Report of the Commission

CAMPBELL, Chairman:

These cases are related and will be disposed of in one report. Defendants in all of the cases and complainants in Nos. 16742, 16770, and Sub-Nos. 1, 3, 4, 5, and 9 filed exceptions to the proposed report of

the examiners, and defendants replied to complainants' exceptions. The cases were orally argued before us.

In these complaints it is alleged that the rates on sugar, in carloads, from California points to destinations in Arizona and from [8] California, Kansas, and Colorado points to Gallup, N. Mex., were and are unreasonable and in some instances unduly

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[1]This report also comprises No. 16770, Bashford-Burmister Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 1), Central Commercial Company v. Same; No. 16770 (Sub-No. 2), Wheeler Perry Company v. Santa Maria Valley Railroad Company et al.; No. 16770 (Sub-No. 3), T. F. Miller Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 4), E. F. Sanguinetti v. Southern Pacific Company et al.; No. 16770 (Sub-No. 5), Arizona Grocery Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 6), Arizona Wholesale Grocery Company et al. v. Arizona Eastern Railroad Company et al.: No. 16770 (Sub-No. 7), C. N. Cotton Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 16770 (Sub-No. 8), Babbitt Brothers Trading Company et al. v. Same; No. 16770 (Sub-No. 9), Wm. H. Dagg Mercantile Company v. Same: No. 17549, Phelps Dodge Mercantile Company v. Same; No. 17549 (Sub-No. 1), Baffert & Leon v. Same; No. 17466, United Verde Extension Mining Company v. Same; No. 17781, Simpson-Ashby Company v. Southern Pacific Company; and Nos. 14140, Solomon-Wickersham Company v. Santa Maria Valley Railroad Company et al., and 14449, Traffic Bureau, Phoenix Chamber of Commerce et al. v. Atchison, Topeka & Santa Fe Railway Company et al., reopened for argument.

prejudicial and preferential. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates and rate differences are stated in amounts per 100 pounds.

In No. 16742, filed February 9, 1925, and No. 17781, filed informally March 16, 1925, and formally November 27, 1925, reparation is asked, respectively, on shipments from California points to Phoenix to the basis of the rate of 71 cents found reasonable on and after July 1, 1922, in No. 14449, Phoenix Chamber of Commerce v. A., T. & S. F. Ry. Co., 95 I. C. C. 244, reopened for argument with these consolidated cases.

In No. 16770 (Sub-Nos. 1 to 9), filed on various dates from February 17 to May 5, 1925, inclusive, it is alleged that the rates from California points to Prescott, Kingman, Tucson, Clarkdale, Yuma, Bowie, Safford, Globe, Flagstaff, Winslow, and Holbrook, Ariz., and from California, Kansas and Colorado points to Gallup were and are unreasonable. There are also allegations that the rates assailed were and are unduly prejudicial to Tucson and unduly preferential of Phoenix; unduly prejudicial to Bowie, Safford, and Globe and unduly preferential of Phoenix and other points taking the same rate, Lordsburg and Deming, N. Mex., and El Paso, Tex.; unduly prejudicial to Gallup and unduly preferential of Albuquerque, N. Mex., and El Paso; and unduly prejudicial to Kingman, Flagstaff, Winslow, and Holbrook and unduly preferential of Albuquerque and Phoenix.

In Nos. 17549, 17549 (Sub-No. 1), and 17466, filed, respectively, on September 3, 1925, February 9, 1926, and August 24, 1925, the rates from California points to Bisbee, Douglas, Clifton, Tucson, and Clarkdale, Ariz., are alleged to have been and to be unreasonable and also unduly preferential of Phoenix and other points.

No. 16742 and No. 16770 (Sub-Nos. 1 to 9) were heard together. Nos. 17549, 17549 (Sub-No. 1), and 17466 were heard together. The parties in No. 17781 agreed to submission of the case upon the record in Nos. 17549, 17549 (Sub-No. 1), and 17466, except as to proof of payment of freight charges.

Phoenix is the only point in Arizona served by both the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe, and the Southern Pacific. It is at the terminus of a branch line of the Santa Fe extending south from Ash Fork, Ariz., 194 miles, but California traffic over the Santa Fe is handled over a branch line, known as the Parker cut-off, extending from Cadiz, Calif., to Wickenburg, Ariz., a point on the Ashford-Phoenix branch, approximately 54 miles north of Phoenix. At the time of the hearings traffic from California [9] moving over the Southern Pacific reached Phoenix over the former Arizona Eastern Railroad, which connects with the main line of the Southern Pacific at Maricopa, Ariz., 35 miles south of Phoenix. Since the hearings the Southern Pacific has opened its new line from Wellton, Ariz., to Phoenix. The distances over this new line are 25 miles shorter than via Maricopa. From Los Angeles and San

Francisco the present distances to Phoenix are, respectively, 489 and 800 miles over the Santa Fe and 426 and 896 miles over the Southern Pacific.

Kingman, Williams, Flagstaff, Winslow, Holbrook, and Gallup are on the main line of the Santa Fe. Clarkdale is at the terminus of a branch line of the Santa Fe, 38 miles in length which extends from Drake, Ariz., a point 21 miles south of Ash Fork on the Maricopa-Phoenix line.

Yuma, Tucson, and Bowie are on the main line of the Southern Pacific. Safford and Globe are on a branch line of that carrier extending from Bowie. Clifton is on a branch line of the same carrier extending from Lordsburg. Bisbee and Douglas are served by the so-called southern lines of the Southern Pacific, formerly the El Paso & Southwestern.

The California points of production extend from San Francisco on the north to Los Angeles on the south. They include San Francisco and Crockett, the only two points at which Hawaiian cane sugar is refined, as well as all points at which beet sugar is produced. All California refining points take the same rates to Arizona destinations.

In Maier & Co. v. Southern Pacific Co., 29 I. C. C. 103, decided January 6, 1914, a rate on sugar from Los Angeles and Los Alamitos, Calif., to Benson, Ariz., of 60 cents, minimum 36,000 pounds, was prescribed. This was the contemporaneous rate to El Paso, a point more distant than Benson on the same line. The 60-cent rate was established generally to main-line Southern Pacific and Santa Fe

points in Arizona and New Mexico, and the San Francisco rate was made 10 cents higher.

In Fourth Section Violations in Rates on Sugar, 31 I. C. C. 511, we denied authority to continue rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, which were lower than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe, and also denied authority to the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific to continue lower rates on sugar from the points of production described to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. In addition [10] to making substantial reductions in the rates in connection with the minimum of 36,000 pounds, the carriers on November 15, 1914, established rates, with a minimum of 60,000 pounds, from all California producing points to practically all Arizona points on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the lower minimum.

In Arizona Corporation Commission v. A., T. & S. F. Ry. Co., 34 I. C. C. 158, the rates from California to Phoenix and Prescott were found to be unreasonable to the extent that they exceeded the rates to the main-line junction points by more than 5 cents. As a result, on May 1, 1916, the rates from California to Phoenix and Prescott became 60 cents, minimum 60,000 pounds, and 65 cents, minimum 36,000 pounds. On June 25, 1918, the main-line

rates were increased 25 per cent to 69 and 75 cents, respectively, and the Phoenix and Prescott rates became 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increase and the rates to main-line points became 77 and 82 cents on November 25, 1919, and to Phoenix and Prescott 82 and 87 cents on February 18, 1920.

On February 29, 1920, the carriers canceled the rates to main-line and branch-line points under the lower minimum weight published in connection with roads under Federal control and, as to such roads, increased the Phoenix and Prescott rate under the minimum of 60,000 pounds to 83.5 cents. This cancellation, as to nonfederal lines, was found justified in Sugar from California Points to Arizona, 58 I. C. C. 737.

On August 26, 1920, the rates on sugar from California, minimum 60,000 pounds, became 96.5 cents to main-line points and $1.045 to Phoenix and Prescott. In Phoenix Chamber of Commerce v. Director General, 62 I. C. C. 412, decided June 22, 1921, the Phoenix rate was found unreasonable to the extent that it exceeded 96.5 cents, and reparation was awarded on that basis. On June 27, 1921, the carriers reduced the main-line rates to 96 cents, and on September 17, 1921, that rate was established to both Phoenix and Prescott. All of these rates were reduced on July 1, 1922, to 86.5 cents.

In United Verde Mining Co. v. A., T. & S. F. Ry. Co., 88 I. C. C. 5, the rates on classes and commodities, including sugar, from California, among

other origin territories, to Clarkdale were found unreasonable to the extent that they exceeded the contemporaneous rates to Drake, and on October 16, 1922, the rate on sugar from California to Clarkdale was reduced from $1.16 to 86.5 cents.

In Sugar Cases of 1922, 81 I. C. C. 448, fourth-section relief authorized in Fourth Section Violations in Rates on Sugar, supra, permitting lower rates to Chicago, Ill., and other points in the Middle [11] West, than to intermediate points, was withdrawn. In the revision following this decision the rate to Chicago, minimum 80,000 pounds, became 84 cents, and this rate was established at intermediate points, including Gallup and main-line Southern Pacific and Santa Fe points in Arizona, but in connection with a minimum of 60,000 pounds. The same rate and minimum were established to Phoenix, Prescott, and Clarkdale.

In our original report in No. 14449 we again considered the rate from California points to Phoenix and found it to have been and to be unreasonable to the extent that it exceeded 79 and 71 cents, respectively, prior and subsequent to July 1, 1922. Reparation was awarded on that basis. The 71-cent rate was established to Phoenix and to intermediate points on the Southern Pacific and on the route of the Santa Fe over the Parker cut-off, effective February 25, 1925. In our original report in No. 14140, Solomon-Wickersham Co. v. S. M. V. R. R. Co., 101 I. C. C. 667, reopened and here before us on argument, the rate on sugar from California points to Bowie was found to have been and to be unreason-

able to the extent that it exceeded 83 and 75 cents, respectively, before and after July 1, 1922. Reparation was awarded on that basis. The reduced rate was established to Bowie and to Tucson, an intermediate point, effective October 27, 1925. The reduction to Bowie was 9 cents, and on the date named the Southern Pacific made reductions of the same amount to Safford and Globe, resulting in rates of 80.5 and 85.5 cents, respectively. No change was made in the Clifton rate of 94.5 cents.

Summarized, the present rates, minimum 60,000 pounds, are 71 cents to Yuma and Phoenix, 75 cents to Tucson and Bowie, 80.5 cents to Safford, 84 cents to Kingman, Williams, Flagstaff, Winslow, Holbrook, Prescott, Clarkdale, Bisbee, Douglas, and Gallup, 85.5 cents to Globe, and 94.5 cents to Clifton.

The general transportation conditions from California to Arizona are fully discussed in the cases cited and also in Arizona Corporation Commission v. A. E. R. R. Co., 113 I. C. C. 52, and will not be further discussed here. The latter case has since been reopened. In Arizona Cattle Growers Asso. v. A. Ry. Co., 101 I. C. C. 181, division 4 approved of prescribed rates on cattle, in carloads, from points in Arizona to points in California which were approximately 20 per cent higher than the corresponding rates for like distances in Oklahoma and Texas. The same level of rates was approved or prescribed in that case from branch-line as from main-line points in Arizona.

In Nos. 16742, 16770, and 16770 (Sub-Nos. 1 to 9) counsel asks reparation on shipments to Phoenix on

the basis of 71 cents, and contends that rates to the other destinations should be graded like [12] the rate to Bowie prescribed in the first report in No. 14149, or else that there should be reasonable groupings. In Nos. 17549, 17549 (Sub-No. 1), and 17466 counsel contends that the origin group should be divided into two parts, the first to include Los Angeles, Dyer, Los Alamitos, San Pedro, and Oxnard, and the second San Francisco, Betteravia, Spreckles, Tracy, Alvarado, and Crockett. The principal counsel in the latter cases is also counsel for complainants in No. 16770 (Sub-Nos. 6, 7, and 8). The rates now suggested from the proposed southern group are 54 cents to Phoenix, Tucson, and Clarkdale, 59 cents to Bisbee, and 64 cents to Clifton, and rates 10 cents higher from the proposed northern group.

The rate of 71 cents to Phoenix prescribed in the original report in No. 14449 was based on a distance of 625 miles, which is approximately one-half of the sum of the short-line distances from Los Angeles and San Francisco. Reference was made in that report to the fact that under the distance scale on sugar prescribed in Memphis-Southwestern Investigation, 77 I. C. C. 473, for application in the general territory comprising Louisiana west of the Mississippi River, Arkansas, and southern Missouri, the rate for 625 miles is 58 cents. The rate of 71 cents prescribed is about 121 per cent of 58 cents. The rates proposed by complainants are lower than 121 per cent of the Memphis-Southwestern scale, and in justification thereof complainants point to the fact

that the minimum weight prescribed in connection with that scale is 36,000 pounds, as compared with 60,000 pounds under the rates assailed. In Oklahoma Traffic Asso. v. A. G. S. R. R. Co., 113 I. C. C. 635, the Memphis-Southwestern scale was prescribed on sugar from New Orleans, La., and points in Louisiana taking the same rates, and from Sugarland and Texas City, Tex., to points in Oklahoma, subject to a minimum of 60,000 pounds.

Defendants are opposed to a disturbance of the origin grouping and to grading of rates at destination. They contend that because of the competitive situation the present origin and destination groupings are of advantage to producers and distributors of sugar. However, if the rates are to be graded at destination they favor breaking up the origin blanket into two groups. Defendants subscribe to a basis of rates from California to Arizona which is about 121 per cent of the rates for the same distances under the Memphis-Southwestern scale, provided that the rates to Arizona points are based upon the weighted-average haul.

As stated, the only California points at which cane sugar is refined are San Francisco and Crockett. The southern California distributors of beet sugar stock a limited amount of cane sugar in order to fill orders for mixed carloads containing certain varieties of sugar [13] not obtainable at beet-sugar refineries. The production of beet sugar in California during 1925 was as follows:

Producing Point	Quantity
	Tons
Dyer	9,095
Los Alamitos	2,010
Oxnard	15,310
Betteravia	18,559
Spreckles	30,066
Tracy	8,297
Alvarado	9,580
Total	92,917

The production at the southern California points of Dyer, Los Alamitos, and Oxnard was 28.43 per cent of the total production for the State during 1925. In addition there was a substantial movement of sugar by water to San Pedro, Calif.

During the past several years, due to blight, drought, and the use for other purposes of land formerly planted in beets, there has been a substantial diminution in the amount of beet sugar produced in southern California and, as a consequence, a reduction in the number of refineries. The following table, giving movements from California refineries on the Southern Pacific to destinations in Arizona and New Mexico and to El Paso, shows that there has been a substantial reduction, both in the volume of movement from southern California to the territory of destination described and in the ratio such tonnage bears to the tonnage from northern California:

	Northern California			Southern California		
	Cars	Tons	Per cent	Cars	Tons	Per cent
Year 1921	187	5,920	24	265	8,519	76
Year 1922	188	5,920	39.4	265	8,423	70.6
Year 1923	247	7,754	72.9	67	2,129	27.1
Year 1924	313	9,856	86	44	1,415	14
Year 1925	504	15,615	95.5	23	714	4.5

In addition to the above there were shipments of sugar from San Francisco over the Santa Fe to destinations on its own line west of Albuquerque. In 1925 they amounted to 107 cars, weighing 3.029 tons. This additional tonnage changes the percentages for 1925 to 96.3 per cent from northern California and 3.7 per cent from southern California. Of the total of 611 cars from northern California, 227 moved from San Francisco and 370 from Crockett. The weight of the shipments from these two points aggregated 18,490 tons. Only 14 cars moved from other northern California points, of which 11 moved from Spreckles and 3 from Betteravia.

We have upon this record no serious contention from producers, distributors, or consumers that a breaking up of the present exten- [14] sive origin and destination groupings would be detrimental to their interests. Bearing in mind the length of time during which the present California group has existed and the fact that until recent years the movement has been substantial from both northern and southern California, we do not find that group as such to have been or to be unreasonable; but in view

of the fact that most of the movement now is from two of the most distant points of shipment, an origin group approximately 500 miles in length is no longer justified. A more reasonable adjustment for the future would seem to require the breaking up of the origin territory into two groups, the northern group extending from San Francisco and Crockett on the north to Spreckles on the south, and the southern group extending from Betteravia on the north to Dyer on the south.

Since the hearings in these cases we have decided Consolidated Southwestern Cases, 123 I. C. C. 203, in which new distance scales of rates were prescribed for application on classes and commodities generally throughout the Southwest. The scale on sugar prescribed in those cases, hereinafter referred to as the southwestern scale, is 30 per cent of the first-class rates therein prescribed and will apply in connection with a minimum weight of 60,000 pounds. The following table shows the average short-line distances from the southern and northern groups to points or groups of destination and compares the rates proposed by certain of complainants with rates on basis of 120 per cent of the southwestern scale for like distances:

	From southern group			From northern group		
	Distance	Complainants' proposed rates	120% of southwestern rates	Distance	Complainants' proposed rates	120% of southwestern rates
	Miles	Cents	Cents	Miles	Cents	Cents
From Group 1 to Yuma, Ariz.	267	40	45.5	637	50	72
From Group 2 to Kingman, Ariz.	388	47	56.5	645	57	73
From Group 3 to Phoenix, Ariz.	467	55	61	749	65	79
From Group 4 to—						
Tucson, Ariz.	519	.....	.....	847	.....	.....
Prescott, Ariz.	526	.....	.....	782	.....	.....
Williams, Ariz.	527	.....	.....	783	.....	.....
Flagstaff, Ariz.	561	.....	.....	818	.....	.....
Clarkdale, Ariz.	563	.....	.....	820	.....	.....
Group average	539	55	65	810	65	83
From Group 5 to—						
Winslow, Ariz.	619	.....	.....	876	.....	.....
Bisbee, Ariz.	628	.....	.....	956	.....	.....
Bowie, Ariz.	634	.....	.....	961	.....	.....
Douglas, Ariz.	643	.....	.....	971	.....	.....
Holbrook, Ariz.	652	.....	.....	909	.....	.....
Group average	635	59	72	935	69	89
From Group 6 to—						
Safford, Ariz.	674	60	74.5	1,001	70	92.5
From Group 7 to—						
Gallup, N. Mex.	747	.....	.....	1,004	.....	.....
Clifton, Ariz.	753	.....	.....	1,081	.....	.....
Globe, Ariz.	758	.....	.....	1,085	.....	.....
Group average	752	64	79	1,057	74	95

No. 16670 (Sub-No. 7) brings in issue the reasonableness of the rates from Colorado and Kansas refineries to Gallup, and contains a prayer for reparation on shipments subsequent to March 31, 1923. Prior to June 25, 1918, the rate on sugar from transcontinental Group E, which includes New Orleans, to Pacific coast points was 85 cents, minimum 60,000 pounds, and this rate applied as maximum from Kansas and Colorado points. The general increases and reduction resulted in rates from Colorado and Kansas, respectively, to Arizona points on the Santa Fe of $1.195 and $1.28, the difference resulting from general increases of 25 and 33 1/3 per cent, respectively, from Colorado and Kansas on August 26, 1920. At the time of the hearing the fifth-class rate of $1.145 was applicable on sugar from Colorado refineries to Gallup. At that time a commodity rate of 75 cents applied from Colorado points to Albuquerque, and on August 1, 1925, the present commodity rate of 84 cents, minimum 60,000 pounds, was established from the same points to Gallup. The present rate to Albuquerque is 76 cents, and the same rate applies from Denver and Pueblo, Colo., to El Paso. To Fort Worth, Tex., the rate is 72 cents, minimum 36,000 pounds.

The record fails to show any movement, actual or prospective, from Kansas, and the rates from that State will not be further considered.

The Colorado points of origin are shown by complainant as including Denver, Fort Collins, Greeley, Holly, Lamar, Longmont, Loveland, Las Animas, Lupton, Rocky Ford, Swink, and Windsor. The Santa Fe, which is the only carrier serving the Colorado group named as defendant herein, carries

rates to points on its line in Arizona and New Mexico only from Holly, Lamar, Las Animas, Rocky Ford, and Swink. The average distance from the group to Gallup is shown by complainants as 625 miles. Complainant in No. 16670 (Sub-No. 7) showed only seven shipments from Colorado to Gallup since March 31, 1923, six from Swink, and one from Rocky Ford.

The rates herein prescribed under section 1 will remove any undue prejudice which may exist in the rates assailed, and no findings with respect to the allegations under section 3 are necessary.

The evidence shows that all of the complainants, except the C. N. Cotton Company, made or received shipments of sugar as described, and paid and bore the charges thereon.

Defendants call attention to the fact that in our original report in No. 14449 we awarded reparation on shipments which moved to Phoenix on a rate 0.5 cent less than the rate prescribed as reasonable by us from and to the same points in Phoenix Chamber of Com- [16] merce v. Director General, supra, referred to as the First Phoenix case, and that the period of reparation in the former case extended back approximately four months prior to the date when the latter case was decided. Defendants contend that they should not be required to pay reparation on shipments which moved under rates approved or prescribed by us. We have several times announced that the doctrine of res adjudicata is not applied by us. Goss v. Director General, 73 I. C. C. 649. We reserve the right,

upon a more comprehensive record, to modify our previous findings, whether in the same or a previous case, upon matters directly in issue before us as to which it clearly appears that our previous findings would not accord substantial justice under the laws which we administer. We have such a case here. For the first time the record before us is comprehensive in the evidence which it contains bearing upon the reasonableness of the rates assailed. Upon this record we reach the conclusion that the rate prescribed in the first Phoenix case, during the period embraced in these complaints, was unreasonable and that a lower rate would have been reasonable during that period. If we are within our authority in finding that a lower rate would have been reasonable, then it must follow that shippers who paid the freight charges at the higher rate paid charges which were unreasonable, and are entitled to reparation upon adequate proof that they paid or bore such charges.

We find that the assailed rate, minimum 60,000 pounds, from Holly and other Santa Fe points in Colorado grouped therewith to Gallup was, is, and will be unreasonable to the extent that it exceeded, exceeds, or may exceed 72 cents. We further find that the assailed rates, minimum 60,000 pounds, from California points were, are, and will be unreasonable to the extent that they exceeded, exceed, or may exceed, respectively, the following, in cents per 100 pounds:

Prior to July 1, 1922, to Phoenix 79 cents from the Southern California group and 81 cents from the northern California group and to Bowie 83

cents from the southern California group and 93 cents from the northern California group; on and between July 1, 1922, and the effective date of the rates herein prescribed for the future, from the southern California group and the northern California group, respectively, *66* and 66 cents to Yuma, 68 and 69 cents to Kingman, 71 and 73 cents to Phoenix, 73 and 77 cents to Prescott, Williams, Tucson, Flagstaff, and Clarkdale, 75 and 84 cents to Winslow, Holbrook, Bisbee, Bowie, and Douglas, 77 and 87 cents to Safford, and 79 and 89 cents to Gallup, Clifton, and Globe; and for the future as follows: [17]

To—	From southern California group	From northern California group
	Cents	Cents
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoenix, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, N. Mex.	79	89
Clifton, Ariz.	79	89
Globe, Ariz.	79	89

We further find that complainants, except the C. N. Cotton Company, made shipments as described at the rates herein found to have been unreasonable; that they paid and bore the charges thereon and were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. No reparation orders have been issued in Nos. 14449 and 14140, and complainants in those cases should submit to the carriers new statements in compliance with Rule V referred to.

Our original order in No. 14449 and the order of division 3 in No. 14140 will be modified in conformity with the foregoing conclusions, and appropriate orders for the future will be entered in other cases disposed of in this report.

TAYLOR, Commissioner, concurring in part:

I dissent from so much of this report as finds the rates unreasonable in the past and awards reparation.

COMMISSIONER PORTER did not participate in the disposition of this case. [18]

ORDERS.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of March, A. D. 1928

No. 16770

Bashford-Burmister Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 1)

Central Commercial Company

v.

Same

No. 16770 (Sub-No. 2)

Wheeler Perry Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

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No. 16770 (Sub-No. 3)

T. F. Miller Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

No. 16770 (Sub-No. 4)

E. F. Sanguinetti

v.

Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company [19]

No. 16770 (Sub-No. 5)

Arizona Grocery Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 16770 (Sub-No. 6)

Arizona Wholesale Grocery Company

v.

Arizona Eastern Railroad Company; Pacific Elcetric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

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No. 16770 (Sub-No. 7)

C. N. Cotton Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Rio Grande, El Paso and Santa Fe Railroad Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 16770 (Sub-No. 8)

Babbitt Brothers Trading Company; Arizona Stores Company; Babbitt Brothers Company; and Babbitt Brothers

v.

Same

No. 16770 (Sub-No. 9)

Wm. H. Dagg Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Bay Transport Company

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No. 17549

Phelps Dodge Mercantile Company

v.

The Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company [20]

No. 17549 (Sub-No. 1)

Baffert & Leon

v.

The Atchison, Topeka & Santa Fe Railway Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Southern Pacific Company

No. 17466

United Verde Extension Mining Company

v.

Same

No. 17781

Simpson-Ashby Company

v.

Southern Pacific Company

These cases being at issue upon complaints, as amended, and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to points in Arizona, referred to in the next succeeding paragraph hereof, and to Gallup, N. Mex., and from points in Colorado, referred to in the second succeeding paragraph hereof, to Gallup, which shall exceed the rates hereinafter prescribed.

It is further ordered, That said defendants, according as they participate in the transportation, be,

and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from the following California groups, as defined in the report made a part hereof, to the Arizona and New Mexico destinations named below, rates, minimum weight 60,000 pounds, which shall not exceed the following, in cents per 100 pounds: [21]

To—	From southern California group	From northern California group
	Cents	Cents
Yuma, Ariz.	46	66
Kingman, Ariz.	57	69
Phoeniz, Ariz.	61	73
Tucson, Ariz.	65	77
Prescott, Ariz.	65	77
Williams, Ariz.	65	77
Flagstaff, Ariz.	65	77
Clarkdale, Ariz.	65	77
Winslow, Ariz.	72	84
Bisbee, Ariz.	72	84
Bowie, Ariz.	72	84
Douglas, Ariz.	72	84
Holbrook, Ariz.	72	84
Safford, Ariz.	75	87
Gallup, Ariz.	79	89
Clifton, Ariz.	79	89
Globe, Ariz.	79	89

It is further ordered, That said defendants in No. 16670 (Sub-No. 7), according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, from Holly, Lamar, Rocky Ford, and Swink, Colo., and other points on the Atchison, Topeka & Santa Fe Railway in Colorado taking the same rates, to Gallup, N. Mex., a rate which shall not exceed 72 cents per 100 pounds, minimum weight 60,000 pounds.

And it is further ordered, That these orders shall continue in force until the further order of the commission.

SUPPLEMENTAL ORDERS

No. 14449

Traffic Bureau of the Phoenix Chamber of Commerce; Haas-Baruch & Company; Hall-Pollock Company; The Melczer Company; and James A. Dick Company

v.

The Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; Pacific Electric Railway Company; Santa Maria Valley Railroad Company; and Arizona Eastern Railroad Company

No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company and Southern Pacific Company

These cases having been reopened for oral argument jointly with No. 16742, Traffic Bureau of the Phoenix Chamber of Commerce et al. v. A., T. & S. F. Ry. Co. et al., and cases consolidated therewith, and such oral argument having been had, and the commission having, on the date hereof, made and filed a new report containing its find- [22] ings of fact and conclusions thereon, which said report, together with the previous reports herein, 95 I. C. C. 244 and 101 I. C. C. 667, are hereby referred to and made a part hereof:

It is ordered, That the order entered in No. 14449 on January 6, 1925, and the order entered in No. 14140 on July 17, 1925, be, and they are hereby, modified so that the second and third paragraphs thereof will read, respectively, as follows:

It is ordered, That the above-named defendants in No. 14449, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Phoenix, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be,

and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Phoenix, Ariz., minimum weight 60,000 pounds, which shall not exceed 61 cents per 100 pounds from points in the southern California group, as defined in the report of this date made a part hereof, and 73 cents per 100 pounds from points in the northern California group, as defined in the said report.

It is ordered, That the above-named defendants in No. 14140, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 11, 1928, and thereafter to abstain, from publishing, demanding, or collecting rates for the transportation of sugar, in carloads, from points in California to Bowie, Ariz., which shall exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 11, 1928, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar, in carloads, rates to Bowie, Ariz., minimum weight 60,000 pounds, which shall

37

AMENDED CLAIM NO. 3034 OF SOLOMON WICKERSHAM COMPANY UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET NO. 14140, COVERING SHIPMENTS OF SUGAR FROM DYER, OXNARD, SPRECKLES, SAN FRANCISCO AND CROCKETT, CALIFORNIA TO BOWIE, ARIZONA; ROUTED VIA SOUTHERN PACIFIC COMPANY.

66

Date of Shipment	Date of Delivery or Tender of Delivery	Date Charges Paid	Car Initials	Car Number	Weight	AS CHARGED Rate	AS CHARGED Amount	SHOULD BE Rate	SHOULD BE Amount	Reparation on basis of the Commission's Decision
June 29, 1923	July 5 1923	July 7 1923	Q	120442	60450	96½	322.89	75	433.38	69.51
July 6, 1921	July 11, 1921	July 11 1921	GH	68863	68863	96½	664.53	83	571.56	92.97
" 15, 1921	" 21, 1921	" 22, 1921	GH	35826	80600	96½	777.79	83	668.98	108.81
Aug. 8, 1921	Aug. 10, 1921	Aug. 12, 1921	PRR	39397	81084	96½	782.46	83	673.00	109.46
Sept. 5, 1921	Sept. 10, 1921	Sept. 13, 1921	Q	120688	80625	96	774.00	83	669.19	104.81
Nov. 26, 1921	Nov. 25, 1921	Dec. 3, 1922	BO	172093	64835	96	622.42	83	538.13	84.29
Mar. 17, 1922	Mar. 24, 1922	Mar. 24, 1922	SP	35582	81039	96	777.97	83	672.62	105.35
Apr. 20, 1922	Apr. 24, 1922	Apr. 24, 1922	HTC	11701	80600	96	773.76	83	668.98	104.78
Aug. 24, 1922	Aug. 28, 1922	Aug. 31, 1922	SP	63173	100750	86	871.49	75	755.63	115.86
Sept. 3, 1923	Sept. 7, 1923	Sept. 8, 1923	SP	16556	90713	86½	784.67	75	680.35	104.32
Apr. 26, 1923	May 3, 1923	May 3, 1923	H&TC	11687	64204	86½	555.36	84	539.31	16.05
None	May 31, 1922	May 31, 1922	SP	36701	86035	96	825.94	93	800.13	25.81
Mar. 21, 1923	Mar. 23, 1923	Mar. 3, 1923	SP	66919	80898	86½	699.75	84	679.55	20.22
June 14, 1923	June 21, 1923	June 21, 1923	B&O	97451	61200	86½	529.38	84	514.08	15.30
July 17, 1923	July 23, 1923	July 26, 1923	SP	35884	80947	86½	700.19	84	679.95	20.24
Sept. 13, 1923	Sept. 21, 1923	Sept. 22, 1923	SP	21661	67180	86½	581.10	84	564.31	16.79
Nov. 20, 1923	Nov. 27, 1923	Nov. 30, 1923	NYC	226117	60840	86½	526.27	84	511.06	15.21
Dec. 3, 1923	Dec. 10, 1923	Dec. 15, 1923	WAB	79870	60468	86½	523.05	84	507.93	15.12
July 1, 1922	July 7, 1922	July 8, 1922	SP	88376	60600	86½	524.19	84	509.04	15.15
Aug. 11, 1922	Aug. 21, 1922	Aug. 23, 1922	SP	18179	84542	86½	731.29	84	710.15	21.14
Nov. 1, 1922	Nov. 9, 1922	Nov. 10, 1922	SP	20679	91770	86½	793.84	84	770.87	22.97
Dec. 28, 1922	Jan. 5, 1923	Jan. 5, 1923	TNO	34899	91394	86½	790.56	84	767.71	22.85
Feb. 6, 1923	Feb. 14, 1923	Feb. 15, 1923	SP	87024	61337	86½	530.57	84	515.23	15.34
Feb. 26, 1923	Mar. 5, 1923	Mar. 8, 1923	SP	85774	80680	86½	697.88	84	677.71	20.17
Apr. 28, 1923	May 5, 1923	May 5, 1923	DGT	24548	80849	86½	699.34	84	679.13	20.21
Aug. 6, 1923	Aug. 10, 1923	Aug. 10, 1923	RG	156860	60450	86½	522.89	75	453.38	69.51
TOTAL							$17,883.58		$16,251.34	$1,632.24

The Undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

(DATE) 10 Da.con OCT 22 1930 F D S

SOUTHERN PACIFIC COMPANY, Collecting Carrier-Defendant,

By _____ Auditor

July 26, 1928.

SOLOMON WICKERSHAM COMPANY,
Bowie, Arizona,
BY: CHAS. E. BLAINE,
Commerce Counsel,
417-423 Home Builders Bldg.,
Phoenix, Arizona.

AMENDED CLAIM NO. 3034 OF SOLOMON WICKERSHAM COMPANY UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET NO. 14145, COVERING SHIPMENTS OF SUGAR FROM BETTERAVIA, CALIFORNIA, TO BOWIE, ARIZONA, ROUTED VIA SOUTHERN PACIFIC AND SANTA MARIE VALLEY RAILROAD.

Date of ** Shipment	Date of Delivery or Tender of Delivery	Date Charges Paid	Car Initials	Car Number	Weight	AS CHARGED Rate	AS CHARGED Amount	SHOULD BE Rate	SHOULD BE Amount	Reparation on basis of the Commission's Decision
Sept. 14, 1923	Sept. 21, 1923	Sept. 19, 1923	SP	34691	70525	86½	610.04	75	528.94	81.10

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

_____
Date.

SOUTHERN PACIFIC COMPANY,
Collecting Carrier, Defendant,

By: _____, Auditor
AUDITOR OF FREIGHT ACCOUNTS

SANTA MARIE VALLEY RAILROAD,

By: _____, Auditor.

SOLOMON WICKERSHAM COMPANY,
Bowie, Arizona.

By: CHAS. E. BLAINE,
Commerce Counsel,
Rooms 417-423 Home Builders',
Phoenix, Arizona.

July 26, 1928.

CLAIM NO. 5220 OF SOLOMON VICKERSHAM COMPANY UNDER THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN DOCKET NO. 14140, COVERING SHIPMENTS OF SUGAR FROM OXNARD, CALIFORNIA, TO BOWIE, ARIZONA, ROUTED VIA THE SOUTHERN PACIFIC COMPANY.

6 Date of Shipment	Date of Delivery or Tender of Delivery	Date Charges Paid	Car Initials	Car Number	Weight	AS CHARGED Rate	AS CHARGED Amount	SHOULD BE Rate	SHOULD BE Amount	Reparation on basis Commission's Decision
April 4, 1921	April 11, 1921	April 12, 1921	SP	35632	80600	96½	777.79	83	668.98	108.81
May 17, 1921	May 23, 1921	May 23, 1921	M&STL	20128	70525	96½	680.57	83	585.36	95.21
June 8, 1921	June 14, 1921	June 17, 1921	GH	5 142	60450	96½	583.34	83	501.74	81.60
June 12, 1922	June 17, 1922	June 17, 1922	SP	26987	65600	96	628.80	83	543.65	85.15
TOTAL.....							$2,670.50		$2,299.73	$370.77

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date

SOUTHERN PACIFIC COMPANY,
Collecting Carrier Defendant

Auditor

AUDITOR OF FREIGHT ACCOUNTS

SOLOMON VICKERSHAM COMPANY,
Bowie, Arizona.

By: CHAS. E. BLAINE, Commerce Counsel,
Rooms 417-423 Home Builders' Bldg.,
Phoenix, Arizona.

July 20, 1928.

EXHIBIT C.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of April, A. D. 1930

No. 14140

Solomon-Wickersham Company

v.

Santa Maria Valley Railroad Company et al.

It appearing, That on March 12, 1928, the commission, entered its report in the above-entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing among other things, the dates on which payment of the charges assailed was made; we find that complainant is entitled to awards of reparation from the defendants named in the following table, in the amounts set opposite their respective names, with interest.

Defendants	Amounts
Southern Pacific Company	1723.01
Southern Pacific Company and Santa Maria Valley Railroad Company	81.10

It is therefore ordered, That the defendants, named in each of the groups shown in the above table, be, and they are hereby, authorized and di-

rected to pay unto the complainant, Solomon-Wickersham Company, on or before May 31, 1930, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged for the transportation of numerous carloads of sugar from California points to Bowie, Arizona.

By the commission.

GEORGE B. McGINTY,
Secretary.

[Seal Interstate Commerce Commission]

A true copy

GEORGE B. McGINTY,
Secretary. [28]

[Endorsed]: Filed Nov. 12, 1930. [29]

D. C. Form No. 45

SUMMONS.

United States District Court

Tucson ..... Division ..... District of Arizona.

L-763 Phx

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the ..... District of Arizona, GREETING:

YOU ARE HEREBY COMMANDED, That you summon SOUTHERN PACIFIC COMPANY, a

corporation, late of your District, if it may be found therein, so that it be and appear within 20 days after service of this summons before the United States District Court for the District of Arizona, at Tucson, next to answer to a complaint filed in this Court wherein Solomon-Wickersham Company, a corporation, is plaintiff, and Southern Pacific Company, et al are defendants.

And have you then and there this writ.

WITNESS, the Honorable F. C. Jacobs, United States District Judge at Phoenix, this 12th day of November, A. D. 1930.

[Seal] J. LEE BAKER,
Clerk.
By H. F. Schlittler,
Deputy Clerk. [31]

Form No. 282

RETURN OF SERVICE OF WRIT.

United States of America,
Tucson, District of Arizona—ss.

Received Writ Nov. 13th, 1930 at Tucson, Ariz.

I hereby certify and return that I served the annexed Summons and a Copy of Complaint on the therein-named A. L. Pixley, Freight agent for The Southern Pacific Railroad Company, Tucson, Arizona, by handing to and leaving a true and correct copy thereof, to which was attached a copy of the Complaint therein to A. L. Pixley————per-

sonally at Tucson, Ariz. in said District on the 14th day of November, 1930, A. D. 19.....

G. A. MAUK,
U. S. Marshal.
By Tom Mills, Deputy.

[Endorsed]: Filed Nov. 14, 1930. [32]

[Title of Court and Cause—No. L-548-Tucson.)

MINUTE ENTRY OF WEDNESDAY, DECEMBER 24, 1930

L-548

SOLOMON-WICKERSHAM COMPANY, a corporation,

Plaintiff,

vs.

SANTA MARIA VALLEY RAILROAD COMPANY, a corporation, et al,

Defendants.

ORDER TRANSFERRING CASE TO PHOENIX DIVISION.

Pursuant to stipulation of respective counsel, and the approval of the Honorable F. C. Jacobs, United States District Judge at Phoenix,

IT IS ORDERED that this case be and the same is transferred to the Phoenix Division of this Court for further proceedings. [35]

[Title of Court and Cause—No. L-763-Phoenix]

MINUTE ENTRY OF MONDAY,
SEPTEMBER 12, 1932

L-763

SOLOMON-WICKERSHAM COMPANY,
a corporation,

Plaintiff,

vs.

SANTA MARIA VALLEY RAILROAD COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation,

Defendants.

Messrs. White & Wilson, by Samuel White, Esquire, appear as counsel for the plaintiff. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Plaintiff's Motion to Set for Trial is now regularly called, and

IT IS ORDERED that this case be, and the same is hereby set for trial at Phoenix, Tuesday, October 11, 1932, at the hour of ten o'clock A. M. [39]

[Title of Court and Cause.]

MINUTE ENTRY OF MONDAY,
SEPTEMBER 26, 1932.

L-763

Upon motion of Alexander B. Baker, Esquire, of counsel for the defendants, and with the consent of Samuel White, Esquire, of counsel for plaintiff,

IT IS ORDERED that the defendants be allowed to file an Amended Answer to plaintiff's Complaint. [40]

[Title of Court and Cause.]

AMENDED ANSWER TO COMPLAINT.

Now come the defendants in the above entitled action, and by leave of the Court first had and obtained, file this, their joint and several amended answer to the complaint on file therein, wherein and whereby said defendants admit, allege and deny as follows:

I.

Admit the allegations of paragraphs I, II, III and VII of said complaint.

II.

Answering paragraph IV of said complaint, defendants deny that said Interstate Commerce Commission at any time found that said rates of 86½ cents, 96 cents, and/or 96½ cents per 100 pounds, as referred to in said paragraph were or was unjust and/or unreasonable, and/or excessive as to said plaintiff, or in any other respect, either to the extent alleged or to any extent whatsoever, and deny further that said rates, and/or the freight charges accruing thereunder, or either or any of them, were or was or are or is in fact unjust and/or unreasonable, and/or in violation of the Interstate Commerce Act, or otherwise or in any manner un-

lawful; but defendants admit that said Commission undertook to find whether [41] said rates had been unreasonable and/or unjust and/or excessive to the extent that they exceeded 93 cents per 100 pounds upon shipments originating at points in northern California prior to July 1, 1922, and destined to Bowie, Arizona, and to the extent that they exceeded 84 cents per 100 pounds, upon shipments originating at points in northern California, from and after July 1, 1922, and destined to Bowie, Arizona, and to the extent that they exceeded 83 cents per 100 pounds upon shipments originating at points in southern California, prior to July 1, 1922, and destined to Bowie, Arizona, and to the extent that they exceeded 75 cents per 100 pounds, upon shipments originating at points in southern California from and after July 1, 1922, and destined to Bowie, Arizona; admit further that said Commission undertook to find that said plaintiff was entitled to reparation upon its said shipments moving under said rates from and to said points of origin and destination; but defendants allege that said report and/or findings of said Commission, and each thereof, as to each and all of said shipments of said plaintiff which had been made and delivered prior to the rendition and issuance of said report and/or findings, were and was and are and is beyond the jurisdiction of said Commission and void, as is hereinafter more particularly set forth.

III.

Answering paragraph V of said complaint, defendants admit that, substantially as alleged in said paragraph, said Commission undertook to require and direct said plaintiff herein to comply with Rule V of its Rules of Practice; admit further that said plaintiff undertook to prepare statements purporting to show, with respect to each of the plaintiff's said shipments, the information required by said Rule V; admit that said statements were thereafter transmitted to the defendants; but deny that the same were thereafter certified by said defendants or any of them; deny further that the copies of said statements which are annexed [42] to and form Exhibit B to the complaint on file herein, are correct, insofar as the same undertake to set forth any liability whatsoever for reparation, on the part of said defendants or either or any of them.

IV.

Answering paragraph VI of said complaint, defendants admit that, substantially as alleged in said paragraph, said Commission undertook to make an order of the character described in said paragraph; but defendants allege that said purported order was and is in all respects beyond the jurisdiction of said Commission and without statutory authority and void, as is hereinafter more particularly set forth.

V.

Answering paragraph VIII of said complaint, defendants deny that by reason of said alleged unjust

and/or unreasonable and/or excessive rates and/or charges, or by reason of the refusal of defendants to pay said reparation, or otherwise, plaintiff has been damaged, either in the sum of $1804.11, or any other sum or amount mentioned in said complaint, either with interest or otherwise; or that said plaintiff has otherwise been damaged, in any other or different sum or sums whatsoever.

VI.

Answering paragraph IX of said complaint, defendants deny that the sum of $500.00 or any other sum whatsoever, is or would be a reasonable attorney's fee to be allowed in this action.

VII.

Defendants further show and allege that said purported order of said Interstate Commerce Commission, referred to in paragraph VI of said complaint, insofar as it authorizes, directs and/or commands the payment of reparation upon the plaintiff's said shipments, was and is beyond the power and jurisdiction of said Commission, and without any statutory warrant or authority whatsoever; [43] and in this behalf defendants allege that the rates which were charged and collected upon plaintiff's said shipments, as set forth in said complaint, had previously been formally approved, and declared to be reasonable, by said Commission, and/or were less in amount than rates which had been specifically approved and declared by said Commission to be rea-

sonable, after formal investigation; and that said approved rates remained in full force and effect, subject only, in certain instances, to changes ordered, directed and/or approved by the Director-General of Railroads and/or said Commission itself, during all times mentioned in the complaint before the Commission and in the complaint on file herein; that said rates were applied upon plaintiff's said shipments, and were charged and collected, pursuant to the authority and approval of said Commission; and that each and all of said rates, and/or the charges thereunder accruing upon plaintiff's said shipments, was and were and is and are just, and reasonable, and in full conformity with all of the requirements of the Interstate Commerce Act.

WHEREFORE, defendants pray:

(1) That the Court order judgment to be entered, against said plaintiff, and in favor of defendants, dismissing said complaint;

(2) That defendants be allowed their costs herein incurred;

(3) For such other, further and different relief as may be proper in the premises.

Dated September 23, 1932.

BAKER & WHITNEY,
Attorneys for Defendants.

JAMES E. LYONS
BURTON MASON
Of Counsel.

[44]

State of California,
City and County of San Francisco.—ss.

G. L. KING, being first duly sworn, deposes and says:

That he is Assistant Secretary of Southern Pacific Company, a corporation, one of the defendants in the above entitled proceeding, and makes this verification for and on behalf of said defendants; that he has read the foregoing amended answer and knows the contents thereof, and the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, he believes the same to be true.

G. L. KING.

Subscribed and sworn to before me this 23d day of September, 1932.

[Seal] FRANK HARVEY,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sept. 26, 1932. [45]

[Title of Court and Cause—Consolidated Cases.]

WAIVER OF JURY TRIAL.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this cause that a jury trial shall be waived, and that the case

shall be tried before a judge of this court without the aid or intervention of a jury.

Dated this 26 day of September, 1932.

SAMUEL WHITE,
Attorney for Plaintiff.
BAKER & WHITNEY,
Attorneys for Defendants.

[Endorsed]: Filed Sep 26 1932. [46]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, OCTOBER 11, 1932.

IT IS ORDERED that the Order heretofore entered herein, setting this case for trial this date, be vacated and that this case be continued and reset for trial Wednesday, October 12, 1932, at the hour of ten o'clock, A. M. [47]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF WEDNESDAY, OCTOBER 12, 1932.

This case comes on regularly for trial this day, before the Court sitting without a Jury, a Jury having been expressly waived upon the written stipulation of counsel heretofore filed herein.

Samuel White, Esquire, appears for plaintiff.

Messrs. Baker & Whitney, counsel for Defendants, appear by Burton Mason, Esquire, and Thomas G. Nairn, Esquire.

Upon motion of Burton Mason, Esquire,

IT IS ORDERED that Gerald Duffy, Esquire, be entered as associate counsel for the defendants.

Upon motion of Samuel White, Esquire,

IT IS ORDERED that Frank L. Snell, Jr., Esquire, be entered as associate counsel for plaintiff.

L. O. Tucker, is now sworn to report the evidence in this case.

Burton Mason, Esquire, now moves that Findings of Fact and Conclusions of Law be filed by the Court, at the conclusion of the trial hereof, and

IT IS ORDERED that said Motion be, and the same is hereby granted. [48]

Plaintiff's Case:

The following plaintiff's Exhibits are now admitted in evidence:

1. Report, Interstate Commerce Commission, No. 16742.

2. Order, Interstate Commerce Commission, No. 14140, payment of Reparations.

3. Rule V Statements, Interstate Commerce Commission, being Exhibits "A", "B", "C" to the Complaint.

L. G. Reif is now sworn and examined on behalf of plaintiff.

Plaintiff's Exhibit No. 4, Statement of Rates, is now admitted in evidence.

Counsel for plaintiff now moves for a continu-

ance, for the purpose of introducing further oral testimony, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and Order of the Court, the plaintiff excepts.

Whereupon, the plaintiff rests.

Burton Mason, Esquire, now moves for a non-suit; dismissal of the Complaint, and for Judgment for the defendants, and

IT IS ORDERED that said motion be, and the same is hereby denied, to which ruling and order of the Court, the defendants except.

Defendants' Case:

J. L. Fielding, is now sworn and examined on behalf of the defendants.

The following defendants' Exhibits are now admitted in evidence:

"A" Report and Order, Interstate Commerce Commission, Docket No. 6806.

"B" Report and Order Interstate Commerce Commission, Docket No. 11532. [49]

"C" Report and Order, Interstate Commerce Commission, Docket No. 11442.

"D" Report and Order, Interstate Commerce Commission, Docket No. 13139.

"E" Statement of Carload Rates—History.

"F" Statement of Rates assessed.

"G" Statement of Rates assessed.

"H" Authority No. 8016.

"I" Letter from Director General of Railroads, dated August 15, 1919.

And the defendants rest.

Both sides rest.

Burton Mason, Esquire, now renews Motion for Judgment for the Defendants, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and Order of the Court, the defendants except.

Thereupon, IT IS ORDERED that this case be submitted upon briefs, and by the Court taken under advisement. [50]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY, OCTOBER 13, 1932

Samuel White, Esquire, and Frank L. Snell, Jr., Esquire, appear as counsel for plaintiff. Burton Mason, Esquire, and Gerald Duffy, Esquire, appear as counsel for the defendants.

Frank L. Snell, Jr., Esquire, now moves to reopen this case for the purpose of introducing the testimony of Mr. Blaine, and

IT IS ORDERED that said Motion be, and the same is hereby denied, to which ruling and Order of the Court, the plaintiff excepts.

Upon stipulation of respective counsel,

IT IS ORDERED that this case be set for oral argument, Monday, October 24, 1932, at the hour of ten o'clock, A. M. [51]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY,
OCTOBER 17, 1932

IT IS ORDERED that the Order heretofore entered herein, setting this case for oral argument upon the Law and Facts, Monday, October 24, 1932, at the hour of ten o'clock, A.M., be, and the same is hereby vacated, and that this case be continued to be reset for oral argument upon stipulation of counsel. [52]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF FRIDAY,
OCTOBER 21, 1932

No appearance is made on behalf of the Plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, and Messrs. Chalmers, Fennemore & Nairn, by Thomas G. Nairn, Esquire, appear as counsel for the defendants.

IT IS ORDERED that this case be set for oral argument upon the Law and Evidence, Monday, November 14, 1932, at the hour of ten o'clock, A. M. [53]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY,
NOVEMBER 14, 1932

Samuel White, Esquire, and Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear as counsel for plaintiffs. Messrs. Chalmers, Fenne-

more & Nairn, by T. G. Nairn, Esquire; Messrs. Baker & Whitney, by Alexander B. Baker, Esquire; Gerald Duffy, Esquire, and Burton Mason, Esquire, appear as counsel for the defendants.

Pursuant to Trial heretofore had herein, argument is now had upon the Law and Facts.

Frank L. Snell, Jr., Esquire, opens said argument on behalf of the plaintiffs, and Burton Mason, Esquire, thereafter argues on behalf of the defendants.

And, thereupon, at the hour of 12:10 o'clock, P. M., IT IS ORDERED that further argument herein be continued to the hour of 1:00 o'clock, P. M., this date, to which time counsel are excused.

Subsequently, at the hour of 1:00 o'clock, P. M., respective counsel being present pursuant to recess, further [54] argument is had by Burton Mason, Esquire, and Gerald Duffy, Esquire.

And, thereupon, at the hour of 2:25 o'clock, P. M., IT IS ORDERED that further argument herein be continued to the hour of 2:30 o'clock, P. M., this date, to which time counsel are excused.

Subsequently, at the hour of 2:30 o'clock, P. M., respective counsel being present pursuant to recess, argument is now closed by Frank L. Snell, Jr., Esquire, of counsel for plaintiffs. [55]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY, DECEMBER 29, 1932

These cases having heretofore been tried before the Court sitting without a Jury, a Jury having

been expressly waived upon Stipulation of the parties in writing, submitted upon oral argument, and upon briefs, and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises, the Court finds in favor of the plaintiffs and against the defendants, and

IT IS ORDERED that counsel for plaintiffs prepare Findings of Fact and Conclusions of Law, and that exceptions be entered on behalf of the defendants, and

IT IS FURTHER ORDERED that these cases be continued for hearing to determine the amount of attorneys' fees to be awarded counsel for plaintiffs. [56]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY,
JANUARY 9, 1933

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Upon motion of said counsel for plaintiffs,

IT IS ORDERED that these cases be set for trial upon the matter of attorneys' fees, Tuesday, January 17, 1933, at the hour of ten o'clock, A. M. [57]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, JANUARY 17, 1933

Upon agreement of counsel, these cases are consolidated and come on regularly for hearing this date, upon the matter of attorneys' fees.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, by George T. Wilson, Esquire, appear as counsel for plaintiffs.

Messrs. Chalmers, Fennemore & Nairn, by T. G. Nairn, Esquire; Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, and A. B. Mason, Esquire, appear as counsel for the defendants.

Upon stipulation of counsel, the statement of Samuel White is read into the record on behalf of the plaintiffs.

Upon motion of Frank L. Snell, Jr., Esquire,

IT IS ORDERED that George T. Wilson, Esquire, be entered as associate counsel for plaintiffs.

Frank L. Snell, Jr., is sworn and examined on behalf of plaintiffs. [58]

A. B. Mason is sworn and examined on behalf of the defendants.

Both sides rest.

Whereupon, the cause is now submitted to the Court, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that plaintiffs' attorneys fees be fixed at twenty per cent (20%) of the amount of Judgment in each case, and that an exception be entered on behalf of the defendants. [59]

[Title of Court and Cause—Consolidated Cases.]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the plaintiff, above-named, by its attorney, Samuel White, and hereby requests the court to make the following findings of fact and conclusions of law in this action.

Dated this 1st day of February, 1933.

SAMUEL WHITE
Attorney for Plaintiff. [60]

[Title of Court and Cause—Consolidated Cases.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on for trial at the regular term of said court, and on the 11th day of October, 1932, and having been tried before the court, a jury having been legally waived by the respective parties hereto, plaintiff appearing by its attorney, Samuel White, and the defendants appearing by their attorneys, Baker and Whitney, Chalmers, Fennemore and Nairn, James E. Lyons, Burton Mason and Gerald E. Duffy; and the respective parties herein having offered both oral and documentary evidence in support of their respective pleadings herein, and the trial of said matters having been concluded on the 13th day of October, 1932, and the court, pursuant to stipulation of the parties, on the 17th day of January, 1933, having heard oral testimony offered by the respective parties hereto as to the matter of attorney's fees to be allowed plaintiff's

attorney and the court having been duly requested by the parties hereto to make, enter and file special findings of fact and conclusions of law in said cause prior to rendering judgment; and the court having considered said evidence and said argument of counsel, and being fully advised in the premises, does hereby make and find the following as its findings [61] of fact and conclusions of law, constituting the decision of the court in this action:

FINDINGS OF FACT

I.

That plaintiff is, and was at all times mentioned in plaintiff's complaint, a corporation, organized under the laws of the State of Arizona, and doing business under and by virtue of the laws of the State of Arizona and qualified to do business in said state.

II.

That at all times mentioned in plaintiff's complaint the defendants, Santa Maria Valley Railroad Company and Southern Pacific Company, were, and now are, railroad corporations, engaged in the operation of railroad lines for transportation of freight in interstate commerce, and that each of said corporations was, and now is, a connecting carrier between which there was, and now is, an agreement for a joint line and arrangement for continuous carriage of interstate commerce shipments over their respective lines.

III.

That between the 29th day of July, 1921, and the 3rd day of December, 1923, inclusive, there was shipped by the plaintiff Solomon-Wickersham Company, over the lines of the defendants, Santa Maria Valley Railroad Company and Southern Pacific Company 31 carload shipments of sugar; that said shipments originated at Dyer, Oxnard, Spreck*l*es, San Francisco, Crockett and Betteravia, California, and were destined to the plaintiff at Bowie, Arizona; that said shipments are severally and collectively set forth in plaintiff's Exhibit "B", attached to plaintiff's complaint filed herein, to which reference is hereby made the same as if said exhibit, and the contents thereof, were [62] a part of these findings of fact, and which exhibit correctly shows in detail the points of origin and the points of destination; the dates upon which said shipments were made; the dates upon which the charges for transportation thereof were paid; the car initials and numbers in which said shipments were loaded and transported; the weights of said shipments; the rates charged and the amount collected thereon; the rates and amounts subsequently found by the Interstate Commerce Commission to be reasonable and which should have been charged, and the difference between the rates charged and the rates which said commission found should have been charged, said last mentioned amounts being the amount of reparation claimed by the plaintiff and allowed by said commission, with respect to each of said shipments.

IV.

That the defendants, Santa Maria Valley Railroad Company and Southern Pacific Company, charged the plaintiff, Solomon-Wickersham Company, and said plaintiff was compelled to, and did, pay to said defendants on all said shipments from said points of origin in California to said point of destination in Arizona, between said dates, freight charges in the sums of 86½¢, 96¢, and 96½¢ per hundred pounds; that all said shipments were made on true bills-of-lading from said points of origin to said point of destination.

V.

That the plaintiff, prior to the commencement of this action, filed its petition and complaint with and before the Interstate Commerce Commission of the United States, alleging that the rates and charges on the above mentioned shipments were unjust and unreasonable as to the plaintiff, and that thereafter the defendants filed their answers with and before said commission, said matter being docketed before said commission under Docket No. 14140. [63]

VI.

That the Interstate Commerce Commission issued and filed its Findings of Fact in said matter on the 12th day of March, 1928, which findings are reported in Vol. 140 I. C. C. Page 171; that said commission found that the said rates of 86½¢, 96¢, and 96½¢ per hundred pounds charged and col-

lected by said defendants on said shipments from said points of origin to said points of destination were unreasonable as to the plaintiff to the extent that they exceeded the following rates: 83¢ per hundred pounds from Southern California to Bowie, Arizona; 93¢ per hundred pounds from Northern California to Bowie, Arizona; 75¢ per hundred pounds from Southern California to Bowie, Arizona, 84¢ per hundred pounds from Northern California points to Bowie, Arizona, from and after July 1, 1922, up to and including the 3d day of December, 1923; that said commission further found in said findings that the plaintiff had been damaged in the amount of the difference between said rates paid by plaintiff and said rates found by said commission in said proceedings to have been reasonable, and that plaintiff was entitled to reparation therefor on all said shipments, with interest thereon.

VII.

That the plaintiff has duly complied with all the requirements of said Interstate Commerce Commission as to the proof necessary for the amount of said reparation.

VIII.

That on the 14th day of April, 1930, said Interstate Commerce Commission, in Docket No. 16742 and causes consolidated therewith, including said Docket No. 14140, duly made and published its order, directing and requiring the defendants herein to pay to the plaintiff herein the sum of $1,804.11, [64] together with interest thereon at the rate of

six per cent per annum from the respective dates of payment of the charges collected by the defendants from plaintiff, said sum to be paid on or before the 31st day of May, 1930, said sum being the amount of reparation on account of said unreasonable rate charged and collected by said defendants for transportation of said 31 carload shipments of sugar.

IX.

That the defendants failed and refused to comply with said order to pay said reparation, or any part thereof, though request was made by the plaintiff upon said defendants for payment of same.

X.

That said freight rates charged and collected, as aforesaid, were unjust, unreasonable and excessive as to said plaintiff, and in violation of the Interstate Commerce Act of February 4, 1885, and Acts of Congress amendatory thereof.

XI.

That the just and reasonable freight rates which should have been charged on all said 31 carload shipments from said points of origin in California to said point of destination in Arizona, from and after July 1, 1922, and up to and including the 3d day of December, 1923, were 93¢ and 84¢ per hundred pounds from points in Northern California and 83¢ and 75¢ per hundred pounds from points in Southern California.

XII.

That by reason of the said unreasonable rates and charges, and the payment thereof by plaintiff, and by reason of the refusal of the defendants to pay said reparation in pursuance of said order made by said commission, plaintiff has [65] been damaged by said defendants in the sum of $1,804.11, together with interest thereon at the rate of six per cent per annum from the respective dates of payment, as shown on Exhibit "B", attached to plaintiff's complaint, down to and including the 31st day of May, 1930, amounting to the sum of $857.88; together with interest at the rate of six per cent per annum on the total sum of principal and interest, to-wit: $2,661.99, from said 31st day of May, 1930, until paid.

XIII.

That plaintiff herein has been compelled to employ an attorney-at-law to prosecute the present action to collect said reparation so awarded by said commission, and that 20% of the total amount found due, including principal and interest, is a reasonable sum to be allowed as attorney's fees.

CONCLUSIONS OF LAW.

I.

That said order of the Interstate Commerce Commission dated April 14, 1930, made and entered in that certain proceeding before said commission, entitled Traffic Bureau of Phoenix Chamber of Commerce, et al, vs. Atchison, Topeka & Santa Fe

Railway Company, et al, Docket No. 16742, and causes consolidated therewith, including Docket No. 14,140, which said order required said defendants to pay to the plaintiff herein certain sums of money as set forth in said order and in plaintiff's complaint, was, and is, a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause, and was within the power and jurisdiction conferred on said Interstate Commerce Commission in said cause by law, and that in the making of said order said commission acted within its jurisdiction and power. [66]

II.

That the rates of 86½¢, 96¢, and 96½¢, per hundred pounds charged the plaintiff by the defendants from Dyer, Oxnard, Spreckles, San Francisco, Crockett and Betteravia, California, to Bowie, Arizona, between the 29th day of July, 1921, and the 3d day of December, 1923, inclusive, on said 31 carload shipments of sugar, as shown on Exhibit "B" attached to plaintiff's complaint, were found by the Interstate Commerce Commission, in said proceedings, Docket No. 16742, and causes consolidated therewith, including Docket 14140, unreasonable to the extent that said rates exceeded 93¢, 84¢, 83¢, and 75¢ per hundred pounds from said points of origin to said points of destination between said dates, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines were 93¢ and 84¢ per hundred pounds from Northern California, and

83¢ and 75¢ per hundred pounds from Southern California, to Bowie, Arizona from and after July 1, 1922.

III.

That by reason of said unreasonable charges the plaintiff has been damaged and the defendants, Santa Maria Valley Railroad Company and Southern Pacific Company, are jointly and severally indebted to the plaintiff in the sum of $1,804.11, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B" attached to plaintiff's complaint, down to and including the 31st day of May, 1930, amounting to the sum of $857.88, and interest on said total sum of principal and interest, to-wit $2,661.99, from said 31st day of May, 1930, until paid said principal and interest [67] amounting to the sum of $....., as of this date, and the further sum of 20% of the total amount of said indebtedness, including principal and interest, as and for attorney's fees, amounting to the sum of $..... and said defendants, and each of them, became and are jointly and severally indebted to the plaintiff in said total sum of principal and interest, and attorney's fees of $..... together with plaintiff's costs and disbursements herein expended, and that plaintiff is entitled to judgment therefor.

Dated this.....day of February, 1933.

.....

Judge. [68]

Received Copy of the within documents this 1st day of February, 1933.

BAKER & WHITNEY &
LAWRENCE L. HOWE,
Attorney for

[Endorsed]: Filed Feb. 1, 1933. [69]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY, FEBRUARY 2, 1933

Upon motion of Alexander B. Baker, Esquire, of counsel for the defendants,

IT IS ORDERED that the defendants be allowed twenty (20) days from and after this date, within which to file Proposed Amendments and Additions to Plaintiffs' Findings of Fact and Conclusions of Law. [70]

[Title of Court and Cause—Consolidated Cases.]

DEFENDANTS' PROPOSED AMENDMENTS AND ADDITIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PLAINTIFF.

The defendants in the above-named cause propose amendments and additions to the special findings of fact and conclusions of law requested by plaintiff therein as follows:

1. Defendants propose that the plaintiff's said requested findings and conclusions be amended by

eliminating the preamble thereto, for the reason that the same is not in accordance with the record and the law, and for the further reason that the same is not sufficiently clear, definite and concise; and defendants request that the preamble to the special findings of fact and conclusions of law requested by defendants, annexed hereto, be substituted therefor.

2. Defendants propose that plaintiff's requested findings be amended by eliminating paragraph II thereof, for the reason that the same is not in accordance with the record, and is not sustained or supported by the evidence, and is contrary to the evidence and the record herein; and defendants request that paragraph 2 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

3. Defendants propose that plaintiff's requested findings be [71] amended by eliminating paragraph III thereof, for the reason that the same is not in accordance with the evidence, and for the further reason that the same is not sufficiently clear, definite and concise; and defendants request that paragraph 3 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

4. Defendants propose that plaintiff's requested findings be amended by eliminating paragraph IV thereof, for the reason that the same is not sustained or supported by the evidence, nor in accord with the evidence and the law, and for the further

reason that the same is not sufficiently clear, definite and concise.

5. Defendants propose that plaintiff's requested findings be amended by eliminating paragraph V thereof, for the reason that the same is not sustained or supported by the evidence, nor in accordance with the evidence or the law, and for the further reason that the same is not sufficiently clear and definite; and defendants request that paragraph 4 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

6. Defendants propose that plaintiff's requested findings be amended by eliminating paragraph VI thereof, for the reason that the same is not sufficiently clear and definite, and is not sustained or supported by the evidence, nor in accord with the evidence and the law; and defendants request that paragraph 5 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

7. Defendants propose that plaintiff's requested findings be amended by eliminating paragraph VII thereof, for the reason that the same is not sustained or supported by the record or the evidence, and is contrary to the evidence and the law, and for the further reason that the same is not sufficiently clear and definite; and defendants request that paragraph 6 of the special findings of fact requested by defendants, annexed hereto, be substituted [72] therefor.

8. Defendants propose that plaintiff's requested

findings be amended by eliminating paragraph VIII thereof, for the reason that the same is not sustained or supported by the record or the evidence, and is contrary to the evidence and the law, and for the further reason that the same is not sufficiently clear, definite and concise; and defendants request that paragraph 7 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

9. Defendants propose that plaintiff's requested findings be amended by eliminating paragraphs X and XI thereof, for the reason that the same are not, or is either or any of them, sustained or supported by the evidence, and for the further reason that each and both of said paragraphs are wholly contrary to the evidence and the law; and defendants request that paragraph 16 of the special findings of fact requested by defendants, annexed hereto, be substituted therefor.

10. Defendants propose that plaintiff's requested findings be amended by eliminating the paragraphs XII and XIII thereof, for the reason that the same are not, nor is either of them, sustained or supported by the evidence, and for the further reason that the same are, and each of them is, contrary to the evidence and the law.

11. The defendants propose, as further amendments and additions to the findings of fact requested by the plaintiff, that the Court make findings of fact as set forth in the paragraphs numbered 9, 10, 11, 12, 13, 14 and 15, of the special findings of fact requested by defendants annexed hereto.

12. Defendants propose that the conclusions of law requested by plaintiff be amended by eliminating paragraph I thereof, for the reason that the same is not sustained by the evidence or the law, and is contrary to the evidence and the law; and defendants re- [73] quest that paragraph 2 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

13. Defendants propose that the conclusions of law requested by plaintiff be amended by eliminating paragraph II thereof, for the reason that the same is not sufficiently clear and definite, and for the further reason that the same is not sustained or supported by the evidence or the law, and is contrary to the evidence and the law; and defendants request that paragraph 1 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

14. Defendants propose that the conclusions of law requested by plaintiff be amended by eliminating paragraph III thereof, for the reason that the same is contrary to the evidence and the law, and not sustained by the evidence and the law, and for the further reason that the same is not sufficiently clear and definite; and defendants request that paragraphs 3 and 4 of the conclusions of law requested by defendants, annexed hereto, be substituted therefor.

WHEREFORE, defendants pray that the findings of fact and conclusions of law requested by plaintiff be amended as hereinbefore proposed, and that in addition to said amendments, the Court do

make and find special findings of fact and conclusions of law, as set forth in the document entitled "Special Findings of Fact and Conclusions of Law Requested by Defendants", which is annexed hereto and is herewith filed and presented to the Court; and that in accordance therewith the Court do render and enter judgments in the above causes, in favor of the defendants and against the plaintiffs.

DATED: February 21, 1933.

CHALMERS, FENNEMORE & NAIRN,
BAKER & WHITNEY,
GERALD E. DUFFY,
JAMES E. LYONS,
BURTON MASON,
Attorneys for Defendants. [74]

Received copy of within the 21st day of February, 1933.

SAMUEL WHITE,
Atty for Pltf.

[Endorsed]: Filed Feb. 21, 1933. [75]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF SATURDAY, APRIL 15, 1933

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear as counsel for plaintiffs. Messrs. Baker & Whitney, by Alexander B. Baker, Esquire, appear as counsel for the defendants.

Upon motion of counsel for plaintiffs.

IT IS ORDERED that Findings of Fact and Conclusions of Law, be set for hearing and settlement, Friday, May 12, 1933, at the hour of ten o'clock, A. M. [87]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF FRIDAY, MAY 12, 1933

Findings of Fact and Conclusions of Law requested by Plaintiff, Defendants' Proposed Amendments and Additions thereto, and Special Findings of Fact and Conclusions of Law Requested by Defendants, come on regularly for hearing this day.

Messrs. Elliott & Snell, by Frank L. Snell, Jr., Esquire, appear for the plaintiff. Burton Mason, Esquire, and Gerald Duffy, Esquire, appear for the Defendants.

Argument is now had by respective counsel, and

IT IS ORDERED that the preamble proposed in the Special Findings of Fact and Conclusions of Law requested by Defendants be allowed and adopted and that Plaintiff's exception thereto be allowed; that Plaintiffs' Proposed Findings of Fact 1, 6, 7, 8, 9, 10 as amended, 11, 12, and 13 be adopted, to each of which rulings and order of the Court the Defendants except and that said Plaintiffs' Proposed Findings of Fact 2, 3, 4 and 5 be rejected, to each of which rulings and order of the Court the Plaintiff excepts; [88]

That Defendants' Special Findings of Fact 2, 3 as amended and 4 be adopted, to each of which rulings and order of the Court the plaintiff excepts, and that said Defendants' Special Findings of Fact 1, 5, 6, 7, 8, 16, 9, 10, 11, 12, 13, 14 and 15 be rejected, to each of which rulings and order of the Court the Defendants except;

That Plaintiff's Conclusions of Law be adopted in lieu of Conclusions of Law proposed by Defendants, to which ruling and order of the Court the Defendants except.

IT IS FURTHER ORDERED that the Findings of Fact and Conclusions of Law as adopted be engrossed, that Judgment for the Plaintiff be entered in accordance therewith, and that an exception for Defendants be allowed to said Order for Judgment. [89]

[Title of Court and Cause—Consolidated Cases.]

STIPULATION

To Include Certain Exhibits in Findings of Fact and Conclusions of Law by Reference.

It is stipulated and agreed that the Court in making its Findings of Fact and Conclusions of Law herein, may incorporate by reference "Exhibit B" attached to plaintiff's complaint (also referred to as Rule V statement), with the same force and effect as if the said Exhibit and Statement were physically incorporated in said Findings

of Fact and Conclusions of Law.

Dated this 5th day of June, 1933.

SAMUEL W. WHITE
FRANK L. SNELL, JR.
Attorneys for Plaintiff
BAKER & WHITNEY
Attorneys for Defendants.

[Endorsed]: Filed Jun 8, 1933. [90]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF THURSDAY,
JUNE 8, 1933

Findings of Fact and Conclusions of Law having been presented to the Court in due time, together with the Proposed Amendments thereto, and settled by the Court on the 12th day of May, 1933, the Court now

ORDERS that the said Findings of Fact and Conclusions of Law be filed this 8th day of June, 1933, notwithstanding Rule 31 of this Court.

Thereupon, said Findings of Fact and Conclusions of Law are filed and entered as follows: to-wit: [91]

[Title of Court and Cause—Consolidated Cases.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

DISBURSEMENTS

Marshal's Fees	$ 2.00
Clerk's Fees	10.00
Attorney fees allowed by the Court as provided by law	626.56
Examiner's Fees	
Witness Fees	
Certified copies from I.C.C. of Rule "V" Statements, report and findings, and order of reparation	3.90
Total	$ 646.46

United States of America
District of Arizona—ss.

Samuel White being duly sworn, deposes and says: That he is the Attorney for the plaintiff in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

SAMUEL WHITE

Subscribed and sworn to, before me, this 20 day of May, A. D. 1933.

[Seal] RUE VERA MORRIS
Notary Public.

My commission expires Feb. 28, 1937.

To Baker & Whitney, Chalmers, Fennemore & Nairn, James E. Lyons, and Burton Mason, attorneys for defendants.

You will please take notice that on Tuesday the 13th day of June, A. D. 1933, at the hour of ten o'clock A. M. Plaintiff will apply to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

SAMUEL WHITE
Attorney for Plaintiff.

Service of within memorandum of costs and disbursements and receipt of a copy thereof acknowledged, this 10 day of June, A. D. 1933.

BAKER & WHITNEY
Attorney for Defendants.

Plaintiff's Costs $646.46 taxed and entered this 19th day of June, 1933.

J. LEE BAKER, Clerk
By George A. Hillier
Deputy Clerk.

[Endorsed]: Filed Jun 10, 1933. [102]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, JUNE 13, 1933

This being the time heretofore fixed for taxing plaintiff's costs herein, Messrs. Elliott and Snell, by Frank L. Snell, Jr., Esquire, appear for plaintiff, and Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, appear for Defendants.

Upon motion of counsel for defendants, and upon the consent of counsel for plaintiff,

IT IS ORDERED that the taxing of costs herein be continued and reset for Monday, June 19, 1933, at the hour of 9:30 o'clock, A. M.

Upon motion of Alexander B. Baker, Esquire,

IT IS ORDERED that the Defendants' time be extended for a period of forty (40) days from and after this date, within which to prepare, serve and file Bill of Exceptions. [103]

[Title of Court and Cause—Consolidated Cases.]

DEFENDANTS' EXCEPTIONS TO STATEMENT OF COSTS.

NOW COME the defendants and except to Plaintiff's Statement of Costs and the following items thereof, to-wit:

1. To the item of $626.56, attorneys' fees, on the ground it is not recoverable as costs in that the amount is excessive to such an extent as to amount to an abuse by the Court of its discretion, and upon the further ground that attorneys' fees are allowable only if the plaintiff shall finally prevail, and this case has not been finally concluded, as defendants have notified Court and Counsel of their intention to appeal from the Judgment.

2. To the item of $3.90 for certified copies from the I. C. C. of Rule "V" Statements, etc., upon [104] the ground that the same is not recoverable

as costs and is merely an expense incidental to the preparation of the case for trial.

Dated: June 16, 1933.

BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
GERALD E. DUFFY
J. E. LYONS
BURTON MASON
Attorneys for Defendants.

Received copy within Exceptions this 17th day of June, 1933.

SAMUEL WHITE
Attorney for Plaintiff.

Overruled. June 19, 1933, 9:30 A. M.

J. LEE BAKER, Clerk
By George A. Hillier,
Deputy Clerk.

[Endorsed]: Filed Jun 17, 1933. [105]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY, JUNE 19, 1933

Messrs. Elliott and Snell, by Frank L. Snell, Jr., Esquire, and Samuel White, Esquire, appear for Plaintiff.

Messrs. Baker and Whitney, by Alexander B. Baker, Esquire, appear for the Defendants.

Objection to the decision of the Clerk in taxing plaintiff's costs is now made to the Court by said counsel for the defendants, and particularly to the

items of attorneys' fees and certified copies of Rule V of the Interstate Commerce Commission, and

IT IS ORDERED that said objection be overruled, and that the decision of the Clerk in allowing said costs be, and the same is hereby affirmed, to which ruling and Order of the Court, the defendants except.

Upon motion of Alexander B. Baker, Esquire,

IT IS ORDERED that Stay of Execution of Judgment be extended for a period of forty (40) days from and after June 13, 1933. [106]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY,
JULY 10, 1933

IT IS ORDERED that Defendants may have until and including the 1st day of September, 1933, within which to serve and file Bill of Exceptions, in accordance with the Stipulation on file herein. [107]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF WEDNESDAY,
AUGUST 30, 1933

Upon motion of T. G. Nairn, Esquire, of counsel for Defendants, and upon his representation that said Motion is made upon Plaintiffs' request,

IT IS ORDERED that Plaintiffs' time within which to file proposed Amendments and Exceptions to Bill of Exceptions on file herein, be, and the same is hereby extended to and including September 9, 1933. [108]

[Title of Court and Cause—Consolidated Cases.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on or about the 12th day of October, 1932, the above-entitled cause came on regularly for trial before the Honorable F. C. Jacobs, United States District Judge in and for the District of Arizona, sitting without a jury, a jury trial having been expressly waived by written stipulation signed by counsel for plaintiff and defendants and duly filed in said cause. Plaintiff appeared by its counsel, Samuel White and F. L. Snell, Jr., Esquires, of Phoenix, Arizona, and defendants appeared by their counsel, Messrs. Baker & Whitney, and Chalmers, Fennemore & Nairn, of Phoenix, Arizona, and James E. Lyons, Gerald E. Duffy and Burton Mason, Esquires, of San Francisco, California.

Thereupon, there was offered in evidence by plaintiff, and received as Plaintiff's Exhibit 1, a copy of the opinion and order of the Interstate Commerce Commission in Docket 16742, and associated cases, Traffic Bureau, Phoenix Chamber of Commerce, et al. v. The A. T. & S. F. Ry. Co., et al., 140 I. C. C. 171. A true and correct copy of said opinion and order in said Docket 16742 is attached as Exhibit "A" to the complaint of plaintiff on file herein; and to save repetition the same is hereby referred to, with the same force and effect as if here set forth.

Thereupon, there was offered in evidence by plaintiff, and re- [109] ceived as Plaintiff's Exhibit

2, a copy of an order for the payment of reparation made by the Interstate Commerce Commission under date of April 14th, 1930, in Docket No. 14140, Solomon-Wickersham Company v. Santa Maria Valley R. Co., et al. A true and correct copy of said order so received as Exhibit 2 is annexed as Exhibit "C" to the complaint of plaintiff on file herein; and to save repetition the same is hereby referred to, with the same force and effect as if here set forth.

Thereupon, there was offered in evidence by plaintiff, and received as Plaintiff's Exhibit 3, a certified copy of certain statements showing shipments made to and received by plaintiff, upon which reparation was and is claimed by said plaintiff. A full, true and correct copy of said Exhibit 3 is annexed as Exhibit "B", to the complaint of the plaintiff on file herein; and to save repetition the same is hereby referred to, with the same force and effect as if here set forth.

Thereupon there were offered in evidence by plaintiff by reference, with the same effect as if reproduced physically in the record, and received without objection, the reports of the Interstate Commerce Commission in Docket No. 14999, Arizona Corporation Commission v. A. E. R. Co., et al., 113 I. C. C. 52, and Same v. Same (on reargument) 142 I. C. C. 61.

Thereupon plaintiff offered further evidence as follows:

TESTIMONY OF L. G. REIF.

Direct Examination.

(It was admitted, on behalf of defendants, that Mr. Reif had had several years experience as Rate Expert for the Arizona Corporation Commission, and was competent to examine tariffs and compile therefrom exhibits showing rates; that he was familiar with the tariffs covering rates and charges from interstate points to Arizona; and qualified by experience to express an opinion with regard to such rates.)

"The statement which you have shown to me is an exhibit showing the average distances in miles from the Southern California group to various groups of destinations in Arizona, together with certain scales of rates on various bases, as shown on the exhibit, from the Southern California group to the Arizona groups; also arbitraries from the Northern California group over the rates from the Southern California group, and rates from the Northern California group to the Arizona destination groups made on the basis of the arbitraries, together with certain other rates for purposes of comparison. This tabulation has been checked by me and found to be correct."

Thereupon there was offered in evidence by plaintiff, as its Exhibit 4, the statement referred to in the testimony of Witness Reif. Defendants duly objected to the receipt in evidence of said statement, upon the ground that the same was and is incompetent, and also irrelevant and immaterial to the

(Testimony of L. G. Reif.)

issues in this cause. Said objection was overruled by the Court; to which ruling defendants then and there duly excepted. Said statement was thereupon received in evidence as Plaintiff's Exhibit 4, and is, in words and figures, as follows:

Plaintiffs Exhibit no. 4.

TO	(a) Average Distance	Rates Charged	2 Memphis-South-western Sugar Rates	3 120 Per Cent Memphis-South-western Sugar Rates	4 Rates Prescribed for Reparation Period	5 120 Per Cent Consolidated South-western Sugar Rates	6 Rates Prescribed for Future	7 Arbitraries	8 Rates in Column 3 Plus Arbitraries	9 Rates Prescribed for Reparation Period	10 Rates in Column 5 Plus Arbitraries	11 Rates Prescribed for Future
	(Miles)		(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)
Group 1-												
Yuma	267	SEE RULE V	40	48	66	45½	46	20	68	66	65½	66
Group 3-												
Kingman	383		47	56	68	56½	57	12	68	69	68½	69
Group 4-												
Tucson												
Prescott	539		55	66	73	65	65	12	78	77	77	77
Williams												
Flagstaff												
Group 5-												
Winslow												
Bisbee												
Bowie	635		59	71	75	72	72	12	83	84	84	84
Douglas												
Holbrook												
Group 6-												
Safford	674		60	72	77	74½	75	12	84	87	86½	87
Group 7-												
Gallup												
Clifton	752		64	77	79	79	79	10	87	89	89	89
Globe												

FROM SOUTHERN CALIFORNIA GROUP

FROM NORTHERN CALIFORNIA GROUP

REFERENCES

Column 1 See Rule V Statements (or reparation claims).
2 For rates see 77 I.C.C. 595.
3 Rates shown in 77 I.C.C. 595 plus 20 per cent.
4 140 I.C.C. 180
5 Rates shown in 123 I.C.C. 452, 477 plus 20 per cent.
6 140 I.C.C. 181.
7 Arbitraries added by Commission to the rates from Southern California Groups to make the through rates from Northern California Groups, 140 I.C.C. 181.
8 Memphis-Southwestern sugar rates plus 20 per cent plus arbitraries.
9 140 I.C.C. 180.
10 Consolidated Southwestern sugar rates plus 20 per cent plus arbitraries.
11 140 I.C.C. 181.
(a) See Docket 16742, 140 I.C.C. 171, at 178.

(Testimony of L. G. Reif.)

Witness Reif thereupon testified further as follows:

"I have formed an opinion as to the reasonableness of the rates on sugar to points in Arizona from points in California, particularly northern California, basing my opinion upon the decision of the Interstate Commerce Commission in Docket No. 14999, reported 113 I. C. C. 52, by applying, to the first-class rates prescribed in that case, the percentage relationship prescribed for sugar in the Consolidated Southwestern Cases, 123 I. C. C. 203."

Defendants thereupon objected to any expression of opinion by the witness upon the basis stated, upon the ground that the same was incompetent, in that the decision relied upon was itself already a part of the record and the best authority; and further, in that the opinion was irrelevant and immaterial, in that it purported to relate to rates to a group of destinations, rather than to the point of destination involved in this case, and to rates during the period subsequent to 1926, and particularly for the future, whereas the issue here involved only shipments moving prior to 1924; which objection was overruled by the Court; to which ruling defendants then and there duly excepted.

Thereupon Witness Reif testified further as follows:

"I have based my testimony on the opinion in Docket 14999, because the Commission in Docket 16742 took cognizance of the conditions found in Docket 14999. A pertinent portion of the latter decision reads as follows:

(Testimony of L. G. Reif.)

> 'The Santa Fe showed that the population per square mile along its line in Eastern California, Northern Arizona, and Western New Mexico, is generally comparable with that in Texas differential territory and much less than in the territory covered by the Memphis-Southwestern scale. The population per square mile in most of California, Southern Arizona, and parts of New Mexico, however, appears to be generally greater than in Western Texas east of El Paso. [112] The revenue ton miles and the freight revenue per mile of road were generally greater, and the operating ratios were lower, on the Southern Pacific and Santa Fe than on most of the other principal lines in the Southwest for the years 1920 and 1921. It is defendants' contention that the rate from San Francisco is affected by water competition which is disputed by Los Angeles interveners. There is active water competition between San Francisco and Los Angeles, but there does not appear to be any movement from San Francisco by water and rail to points in Arizona.'

In the Consolidated Southwestern Cases rates on sugar were made on the basis of 30 per cent of the first-class rates. 30 per cent of the first-class rates prescribed in Docket No. 14999 from California points to Arizona would produce a rate, for the average distance of 961 miles from the San Francisco group to Bowie, of 90 cents, disregarding

(Testimony of L. G. Reif.)

water competition, whereas for reparation purposes the Commission in the instant case prescribed 84 cents. Taking the rates actually published by the carriers following the decision in Docket No. 14999, which were lower than the basis prescribed, because of water competition claimed by the carriers to exist, and applying 30 per cent, the resulting rate from the San Francisco group to Bowie would be 80 cents. On the same basis, the reasonable rate from the Los Angeles group would be 65 cents."

Cross Examination:

"The rates from the Los Angeles and San Francisco groups which I have recited are based upon the mileage shown on page 178 of Plaintiff's Exhibit 1. While I derived a rate of 90 cents from northern California points to Bowie, based upon the application of the 30 per-cent factor to the Docket No. 14999 first-class scale, I think that the rate of 84 cents, fixed by the Commission for reparation purposes, might well have been lower in view of the water competition claimed by the carriers to exist; although there is no [113] showing from which I can find that water competition actually did exist. The 90-cent rate would be the measure of a maximum rate, that is to say, the maximum reasonable rate.

A decision of the Interstate Commerce Commission prescribing a reasonable rate between two points would not necessarily be used as the measure of a reasonable rate between two other related

(Testimony of L. G. Reif.)

points in the same territory, although it would be entitled to some consideration. A rate prescribed as reasonable from Los Angeles to Maricopa would be given some consideration as a fair measure of a rate on the same commodity from Los Angeles to Phoenix, all conditions being equal. While it is true that the Commission in the First Phoenix Case (1921), 62 I.C.C. 412, prescribed a rate of 96½ cents from Los Angeles to Phoenix, I justify the application of a rate of 75 cents from Los Angeles to Bowie for a distance 167 miles greater, upon the ground that the record in the First Phoenix Case was incomplete. The complaint in that case asked for reasonable rates; in other words, it invoked Sections 1, 2 and 3, but what it really sought was the removal of discrimination between the main line points and Phoenix under Section 3; and all that was done was to eliminate the branch-line arbitrary to Phoenix. The record in the case was not complete. In Docket 14999, in which the record was a whole lot more complete than that made in the Sugar Case, a higher rate was prescribed to Bowie than to Phoenix, the Commission taking into consideration the 167 miles longer haul.

My Exhibit 4 is largely a copy of a tabulation shown on page 178 of Plaintiff's Exhibit 1, with some additions, and except that the proposal made by the complainants in that case is omitted, and group mileages have been substituted in place of mileages to individual points. On the basis of the short-line mileage of 1021 miles, from San Fran-

(Testimony of L. G. Reif.)

cisco to Bowie, the first-class rate under the Docket 14999 scale would be $3.13. On the basis of a short-line mileage of 787 miles from San Francisco to Phoenix, the first-class [114] rate under the Docket 14999 scale is $2.55. These are the rates as prescribed by the Commission in that case."

Re-direct Examination:

Witness Reif was asked by plaintiff's counsel whether he had in mind the comment made by the Commission in its decision in Docket No. 16742 (140 I.C.C. 171), in saying that the record in the First Phoenix Case in 1921 was not complete and that a lower rate might have been justified upon a more comprehensive record; to which question defendants then and there objected, upon the ground that the same was irrelevant and immaterial, in that the matter had been considered by the United States Supreme Court and a contrary ruling already made; upon the further ground that the witness was incompetent, and not properly qualified, in that he had shown no familiarity with the 1921 case; and upon the further ground that the witness was further incompetent, in that the opinion of the Commission in Docket No. 16742 speaks for itself; each and all of which objections were overruled by the Court; to which ruling defendants then and there duly excepted.

Thereupon Witness Reif testified as follows:

"A lower rate to Phoenix might have been justified upon a more comprehensive record in the First

(Testimony of L. G. Reif.)

Phoenix Case. In the opinion in Docket No. 16742, at page 180, the Commission said that the prior record was incomplete, and that this was the first comprehensive record they had had. The First Case was incomplete, because all that was asked for was a removal of discrimination under Section 3.

Re-cross Examination:

"I became familiar with the First Phoenix Case by reading the decision and seeing the exhibits. The defendants must have introduced evidence in that case, but I am not familiar with it. My only knowledge of the state of that record was acquired from the statement made by the Commission in Docket No. 16742, and from seeing the exhibits in the First Phoenix Case." [115]

Thereupon plaintiff rested.

Thereupon defendants moved the Court for a nonsuit, and for an order dismissing the complaint, and for the entry of judgment against the plaintiff and in favor of the defendants, upon the ground that plaintiff's evidence showed affirmatively that it had no right to recover, and that its entire case was predicated upon an order for reparation which the Interstate Commerce Commission was without jurisdiction to make; and upon the further ground that plaintiff's affirmative showing demonstrated that the rates charged upon the shipments as to which reparation was claimed were not unjust, unreasonable, or otherwise unlawful; which motion of the defendants was denied and overruled by the Court;

to which ruling of the Court defendants then and there duly excepted.

Thereupon there was offered in evidence by the defendants, and received as Exhibit "A", a true and correct copy of the report and order of the Interstate Commerce Commisison in Docket 6806, Arizona Corporation Commission v. A. T. & S. F. Ry. Co., et al., 34 I.C.C. 158, in words and figures as follows: [116]

EXHIBIT "A"

3024

INTERSTATE COMMERCE COMMISSION.

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL. [117]

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Submitted November 30, 1914.

Decided May 25, 1915.

The complaint attacks as unreasonable the rates on sugar and sirup in straight and mixed carloads from producing and refining points in California to all points in Arizona. Subsequent to

the hearing the carriers published reduced rates on these commodities to many points of destination in the state; Held:

1. Except as to the rates to Phoenix and Prescott, Ariz., the evidence of record does not show that the rates in effect at the time of the hearing on sugar and sirup in straight carloads, minimum weight 36,000 pounds, were unreasonable to a greater extent than the amounts of the reductions since made.
2. Rates to Phoenix and Prescott ordered to be established for the future upon a basis of not more than 5 cents per 100 pounds higher than the rates to the junction points.
3. No finding is made as to the rates on sugar and sirup in mixed carloads.

F. A. Jones for Arizona Corporation Commission.

F. H. Wood for Southern Pacific Company and Arizona Eastern Railroad Company.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Hawkins & Franklin for El Paso & Southwestern Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Arizona Corporation Commission brings the proceeding against all carriers which are engaged in the transportation of sugar and sirup from points of origin in the state of California to points of destination in the state of Arizona. It is alleged that the rates on sugar and sirup, in straight and mixed

carloads, from all refining and shipping points in the state of California to all points in the state of Arizona are unjust and unreasonable. It is not alleged, however, that the rates under attack cause any discrimination.

Substantial reductions have been made in the rates on sugar and sirup from California to Arizona points as a result of two recent decisions of the Commission, one of which has been announced since [118] this proceeding was commenced. In Maier & Co. v. S. P. Co., 29 I. C. C., 103, a rate of 90 cents per 100 pounds for the transportation of sugar in carloads, minimum weight 36,000 pounds, from Los Angeles and Los Alamitos, Cal., to Benson, Ariz., was found to be unreasonable and in violation of the fourth section of the act. It was held that the rate to this point was unreasonable in so far as it was in excess of 60 cents.

In conformity with this decision the rate from Los Angeles to Benson was made 60 cents, effective March 15, 1914, and by the same tariff reductions were made to 60 cents in all rates which had exceeded 60 cents from the same point to main-line stations of the Southern Pacific in Arizona. Substantial reductions were also made in the rates on sugar from San Francisco. Prior to March 15, 1914, rates from this point were graded from 85 cents at Yuma, Ariz., to 100 cents at Bowie, Ariz., minimum weight 36,000 pounds. Effective on that date the rates from San Francisco to all points in Arizona on the main line of the Southern Pacific were fixed at 70 cents with the same minimum, and

they have now been reduced to 60 cents, thereby putting them upon the same basis as those from Los Angeles. San Francisco has also been accorded the Los Angeles rates to other Arizona points.

This complaint was filed on April 15, 1914. At that time certain applications for relief from the provisions of the fourth section which concerned some of the rates here involved were pending before the Commission. These applications were decided after the hearing of the issues in this case and are reported in Fourth Section Violations in Rates on Sugar, 31 I. C. C., 511. Reference is made to the report in that case for a full statement of the facts and issues there involved. It is sufficient here to state that our order in that case denied authority to continue lower rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe. The order also denied authority to the Southern Pacific, El Paso & Southwestern, and the Chicago, Rock Island & Pacific to continue lower rates on sugar from San Francisco and other sugar-producing points in California to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. Pursuant to the orders made in Fourth Section Violations in Rates on Sugar, supra, the carriers filed new schedules of rates effective in November and December, 1914, which work substantial reductions

in the rates which were in effect when this complaint was filed.

A further change in rates should be noted. Effective November 15, 1914, rates on sugar were established to practically all Arizona [119] points conditioned upon a minimum weight of 60,000 pounds, which rates were the same from all California producing points, and almost uniformly on a basis of 5 cents lower than the rates from Los Angeles to the same destinations upon the 36,000-pound minimum. A desire for these lower rates with the higher minimum was expressed by complainant's witnesses.

The following table, in which certain points are taken as representative of all points of destination in Arizona, shows the recent reductions in rates on sugar to which we have referred in the foregoing paragraphs. Rates are stated per 100 pounds:

To—	From Los Angeles, Cal., effective—			From San Francisco, Cal., effective—		
	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]
Main-line Santa Fe stations:						
Kingman, Ariz.	$0.72	$0.60	$0.55	$0.82	$0.60	$0.55
Ashfork, Ariz.	.83	.60	.55	.93	.60	.55
Flagstaff, Ariz.	.92	.60	.55	1.00	.60	.55
Holbrook, Ariz.	1.00	.60	.55	1.00	.60	.55
Via Santa Fe, Prescott & Phoenix: Prescott, Ariz.	.83	.75	.70	.93	.75	.70
Main-line Southern Pacific stations:						
Yuma, Ariz.	.66	.60	.53	.85	.60	.55
Kim, Ariz.	.83	.60	.55	.93	.60	.55
Maricopa, Ariz.	.83	.60	.55	.93	.60	.55
Tucson, Ariz.	.83	.60	.55	.93	.60	.55
Benson, Ariz.	.90	.60	.55	1.00	.60	.55
Cochise, Ariz.	.90	.60	.55	1.00	.60	.55
Bowie, Ariz.	.90	.60	.55	1.00	.60	.55
Via branch line Southern Pacific: Nogales, Ariz.	.90	.82	.77	1.00	.82	.77
Via Arizona Eastern:						
Phoenix, Ariz.	.83	.75	.70	.93	.75	.70
Globe, Ariz.	1.30	1.00	.....	1.40	1.00	.....
Kelton, Ariz.	1.05	.75	.70	1.15	.75	.70
Via El Paso & Southwestern:						
Bisbee, Ariz.	.90	.60	.55	1.00	.60	.55
Douglas, Ariz.	.90	.60	.55	1.00	.60	.55
Via Arizona & New Mexico:						
Clifton, Ariz.	1.21	.91	.86	1.31	.91	.86

Substantial reductions in the rates on sirup have also been recently made. Taking the stations named in the foregoing table the rates on sirup from Los Angeles in effect prior to March 15, 1914, compared with the present rates show the following reductions in cents per 100 pounds: To Yuma, from 66 to 53; to Kim, from 83 to 63; to Maricopa and Tucson, from 83 to 75; to Benson, Cochise, and Bowie, from 90 to 75; to Globe, from 130 to 115; to Kelton, from 105 to 90; to Bisbee and Douglas, from 90 to 75; to Clifton, from 121 to 106. The rates to Kingman, 72 cents, to Ashfork, Flagstaff, Holbrook, Phoenix, and Prescott, 75 cents, remain unchanged. It appears that the rate to Florence has been increased from 75 to 80 cents, and that the rate to Nogales has been increased from 90 to 97 cents. Relatively similar reductions have been made in the rates on sirup from [120] San Francisco. The minimum weight prescribed for the rates on sirup is 36,000 pounds. Rates have not been established for the minimum weight of 60,000 pounds, as in the case of sugar.

Prior to March 15, 1914, the rates on mixed carloads of sugar and sirup, minimum weight 36,000 pounds, from Los Angeles and San Francisco to Arizona points were substantially the same as the rates then in effect on sugar. In December, 1914, the commodity rates applicable to mixed carloads were canceled, leaving fifth-class rates applicable to all points in Arizona. To certain of these points the fifth-class rates were reduced, effective November

To—	From Los Angeles, Cal., effective—			From San Francisco, Cal., effective—		
	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]	Prior to Mar. 15, 1914.[1]	Mar. 15, 1914, or subsequently.[1]	Nov. 15, 1914, or subsequently.[2]
Main-line Santa Fe stations:						
Kingman, Ariz.	$0.72	$0.60	$0.55	$0.82	$0.60	$0.55
Ashfork, Ariz.	.83	.60	.55	.93	.60	.55
Flagstaff, Ariz.	.92	.60	.55	1.00	.60	.55
Holbrook, Ariz.	1.00	.60	.55	1.00	.60	.55
Via Santa Fe, Prescott & Phoenix: Prescott, Ariz.	.83	.75	.70	.93	.75	.70
Main-line Southern Pacific stations:						
Yuma, Ariz.	.66	.60	.53	.85	.60	.55
Kim, Ariz.	.83	.60	.55	.93	.60	.55
Maricopa, Ariz.	.83	.60	.55	.93	.60	.55
Tucson, Ariz.	.83	.60	.55	.93	.60	.55
Benson, Ariz.	.90	.60	.55	1.00	.60	.55
Cochise, Ariz.	.90	.60	.55	1.00	.60	.55
Bowie, Ariz.	.90	.60	.55	1.00	.60	.55
Via branch line Southern Pacific: Nogales, Ariz.	.90	.82	.77	1.00	.82	.77
Via Arizona Eastern:						
Phoenix, Ariz.	.83	.75	.70	.93	.75	.70
Globe, Ariz.	1.30	1.00	.....	1.40	1.00	.....
Kelton, Ariz.	1.05	.75	.70	1.15	.75	.70
Via El Paso & Southwestern:						
Bisbee, Ariz.	.90	.60	.55	1.00	.60	.55
Douglas, Ariz.	.90	.60	.55	1.00	.60	.55
Via Arizona & New Mexico:						
Clifton, Ariz.	1.21	.91	.86	1.31	.91	.86

1 Minimum weight, 36,000 pounds. 2 Minimum weight, 60,000 pounds.

Substantial reductions in the rates on sirup have also been recently made. Taking the stations named in the foregoing table the rates on sirup from Los Angeles in effect prior to March 15, 1914, compared with the present rates show the following reductions in cents per 100 pounds: To Yuma, from 66 to 53; to Kim, from 83 to 63; to Maricopa and Tucson, from 83 to 75; to Benson, Cochise, and Bowie, from 90 to 75; to Globe, from 130 to 115; to Kelton, from 105 to 90; to Bisbee and Douglas, from 90 to 75; to Clifton, from 121 to 106. The rates to Kingman, 72 cents, to Ashfork, Flagstaff, Holbrook, Phoenix, and Prescott, 75 cents, remain unchanged. It appears that the rate to Florence has been increased from 75 to 80 cents, and that the rate to Nogales has been increased from 90 to 97 cents. Relatively similar reductions have been made in the rates on sirup from [120] San Francisco. The minimum weight prescribed for the rates on sirup is 36,000 pounds. Rates have not been established for the minimum weight of 60,000 pounds, as in the case of sugar.

Prior to March 15, 1914, the rates on mixed carloads of sugar and sirup, minimum weight 36,000 pounds, from Los Angeles and San Francisco to Arizona points were substantially the same as the rates then in effect on sugar. In December, 1914, the commodity rates applicable to mixed carloads were canceled, leaving fifth-class rates applicable to all points in Arizona. To certain of these points the fifth-class rates were reduced, effective November

27, 1914. From Los Angeles to Yuma this reduction is from 66 to 53 cents; to Kim, from 83 to 63 cents; from San Francisco to Yuma the reduction is from 85 to 75 cents; to Kim, from 93 to 81 cents. The effect of these class-rate reductions is to make lower rates on the mixture of sugar and sirup to these two points than were formerly in effect. To certain other points the commodity rates formerly applicable were the same as the fifth-class rates. In the main, however, the cancellation of commodity rates applicable to mixed carloads of sugar and sirup has resulted in increased rates on this mixture.

An analysis of the changes made in the rates on sugar and sirup, as outlined in the foregoing paragraphs, shows that the rates now in effect to many Arizona points are substantially lower than when this proceeding was brought. It appears, also, however, that the rates to the main-line points which were formerly graded are now largely blanketed to all of these points. It is further to be noted that the destinations on branch lines have not been accorded the full reductions made to main-line points. The rate formerly in effect on sugar from Los Angeles both to Maricopa and Phoenix, with the minimum weight of 36,000 pounds, was 83 cents. The rates as reduced are now 60 and 75 cents, respectively, a differential of 15 cents to the branch-line point over the rate to the junction point on the main line.

Complainant's evidence, other than that relating to commercial conditions, consisted in the main of

exhibits comparing the rates to Arizona points which were in effect when this proceeding was brought with rates on sugar applicable to other movements. In view of the changes in the Arizona rates as above set forth, these exhibits are less persuasive upon the present adjustment of rates than upon the rates as established prior to those changes. Upon examination of all the evidence of record, we are of the opinion and find that the rates on sugar and sirup in straight carloads from points in California to points in Arizona in effect at the time of the hearing have not been shown to be unreasonable to a greater extent than the amounts of the reductions since made. In view of the fact, however, that the carriers have to a considerable extent disregarded distance as a [121] factor in the making of the California-Arizona sugar rates, having established extensive blankets both as to origin and destination points, it is the opinion of the Commission that the present rates to Phoenix via the Southern Pacific and the Arizona Eastern and to Prescott via the Santa Fe are unreasonable in so far as they exceed the rates to the junction points by more than 5 cents per 100 pounds, and that rates for the future should be established upon a basis of not more than 5 cents per 100 pounds over the junction point rates.

The facts of record being insufficient to warrant any finding as to the rates on mixed carloads of sugar and sirup, none will be made.

An order will be entered in accordance with the conclusions herein stated. [122]

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of May, A, D. 1915.

No. 6806.

ARIZONA CORPORATION COMMISSION

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; ARIZONA EASTERN RAILROAD COMPANY; ARIZONA & NEW MEXICO RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; EL PASO & SOUTHWESTERN COMPANY; AND SANTA MARIA VALLEY RAILROAD.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before August 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving their present rates for the transportation of sugar in carloads, minimum weight 36,000 pounds, from points in California to Prescott and Phoenix, Ariz., which said rates have been

found in said report to be unreasonable.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified, and required to establish, on or before August 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of sugar in carloads, minimum weight 36,000 pounds, from points in California to Prescott, Ariz., [123] via Ashfork, Ariz., rates which shall not exceed those contemporaneously in effect from the same points of origin to Ashfork by more than 5 cents per 100 pounds, and to Phoenix, Ariz., via Maricopa, Ariz., rates which shall not exceed those contemporaneously in effect to Maricopa by more than 5 cents per 100 pounds.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

By the Commission.

[Seal] GEORGE B. McGINTY,
Secretary. [124]

Thereupon there was offered in evidence by defendants, and received as Exhibit "B", a true and correct copy of the report and order of said Commission in Docket 11532, Traffic Bureau, Phoenix Chamber of Commerce v. Director General, et al., 62 I. C. C. 412. A true and correct copy of said Exhibit "B" is as follows: [132]

EXHIBIT "B"

No. 11532

TRAFFIC BUREAU, CHAMBER OF COMMERCE, PHOENIX, ARIZ., ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted April 12, 1921. Decided June 22, 1921.

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1. Rates on sugar, in carloads, from California points to Phoenix, Ariz., found unreasonable. Reasonable rate prescribed for the future.
2. Following Phoenix Chamber of Commerce v. Director General, 62 I. C. C. 368, prayer for the establishment of through routes and joint rates from San Francisco, Calif., by way of Phoenix, to points on the Southern Pacific, Maricopa, Ariz., to El Paso, Tex., denied.

Roland Johnston, for complainants.

F. A. Jones for Arizona Corporation Commission, intervener.

E. W. Camp, Elmer Westlake, G. H. Baker, and M. A. Cummings for defendants.

REPORT OF THE COMMISSION.

Division 1, Commissioners McChord, Aitchison, and Lewis.

AITCHISON, Commissioner:

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants.

Complainants are the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., an organization of shippers and citizens of Phoenix, Hall-Pollock Company, and Haas-Baruch & Company, corporations, and the Arizona Grocery Company, a partnership.

The three firms named are engaged in the grocery business at Phoenix. By complaint filed June 14, 1920, they allege that the rates charged by defendants for the transportation of sugar from points in California to Phoenix, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act and section 10 of the federal control act. They ask us to prescribe just and reasonable rates for the future, to award reparation on all shipments moving subsequently to May 2, 1916, and to establish through routes and joint rates from San Francisco, Calif., by way of Phoenix, to Maricopa, Ariz., and points east thereof, on lines of the Southern Pacific Company, to and including El Paso, Tex. The Arizona Cor- [126] poration Commission intervened on behalf of complainants. The allegation of a fourth section violation was abandoned at the hearing. Rates are stated herein in amounts per 100 pounds.

Phoenix is the only point in Arizona common to the lines of the Atchison, Topeka & Santa Fe Railway and the Southern Pacific. It is located on the branch of the Santa Fe extending south from Ash Fork, Ariz., but is served by that carrier on traffic from California by means of a branch line known as the Parker cut-off, which leaves the main line

at Cadiz, Calif., and connects with the Ash Fork branch at Wickenburg, Ariz. Phoenix is served by the Southern Pacific through the medium of the Arizona Eastern Railroad, which it owns and with which it connects at Maricopa, a point on the main line 35 miles southerly from Phoenix. The short-line mileage from San Francisco to Phoenix is via the Santa Fe over the Parker cut-off; from Los Angeles, via the Southern Pacific lines.

Sugar is produced at various points in California. Hawaiian cane sugar is refined at San Francisco and at Crockett, a point 29 miles east of San Francisco on the Southern Pacific; beet sugar is produced at Alvarado, Betteravia, Spreckels, Los Alamitos, Dyer, Delhi, Oxnard, and other points in the central and southern portions of the state. For the purpose of stating rates to Arizona, the refining and producing points of origin in California are included in one group. Rates on sugar from California are also grouped as to destination points. On the main line of the Santa Fe a destination group extends from Yucca, Ariz., to El Paso, and on the main line of the Southern Pacific from Yuma, Ariz., to El Paso. Los Angeles is the nearest point in the California group to Phoenix, and San Francisco possibly the farthest. The distances to Phoenix via the Santa Fe are 489 and 800 miles, and via the Southern Pacific, 451 and 920 miles, respectively, from the two points of origin.

On May 1, 1916, the rates on sugar from the California group to Phoenix were 60 cents, minimum weight 60,000 pounds, and 65 cents, minimum weight

36,000 pounds. Contemporaneously rates from the California group to points in the destination groups described were 5 cents lower than the corresponding Phoenix rates. This difference of 5 cents in favor of main-line points was fixed by us in Arizona Corporation Commission v. A., T. & S. F. Ry. Co., 34 I. C. C., 158, in which we found the Phoenix rate of 75 cents, minimum 36,000 pounds, unreasonable to the extent that it exceeded, by more than 5 cents, the main-line rate to Maricopa. On June 25, 1918, these rates were increased 25 per cent, the main-line rates becoming 69 and 75 cents and the Phoenix rates 75 and 81.5 cents. Subsequently a flat increase of 22 cents was substituted for the percentage increases, and the rates to main-line points became 77 and 82 cents on November [127] 25, 1919, and to Phoenix, 82 and 87 cents on February 18, 1920. On February 29, 1920, defendants canceled the rates to main-line and branch-line points, including Phoenix, under the lower minimum weight published in connection with roads under federal control and, as to such roads, increased the Phoenix rate under the minimum weight of 60,000 pounds to 83.5 cents which, apparently, was done by advancing the 5-cent difference over main-line points to 6.5 cents. In schedules filed to become effective May 14, 1920, the carriers attempted to bring the rates of non-federal lines into harmony with those of the lines previously under federal control, but upon protest we suspended the items carrying such increases. In Sugar from California Points to Arizona, 58 I. C. C. 737, we held that the cancellation of the 36,000 pound

minimum was justified and vacated the order of suspension. The present rates, including the general increases authorized by us on July 29, 1920, are 96.5 cents to main-line points and $1.045 to Phoenix, minimum weight 60,000 pounds. The Phoenix rate applies to practically all points on the Arizona Eastern north of Maricopa and to all points on the branch line of the Santa Fe south of Ash Fork and as far west as Parker, Ariz. There is no movement of sugar from California through Phoenix to points beyond taking lower rates.

Complainants admit that the grouping of California sugar-producing points is advantageous, as it gives them the benefit of a wide purchasing market on a uniform rate. They contend, however, that the rates to Phoenix are unreasonable, in comparison with lower rates from the California group to points involving hauls for distances which are greatly in excess of those to Phoenix. In the subjoined statement the revenues per car, per ton-mile, and per car-mile yielded by the rates to Phoenix are compared with revenues produced by certain of the rates cited by complainants. The rates shown include the general increases authorized by us on July 29, 1920.

From—	To—	Distance.	Rate per 100 pounds.	Revenue.		
				Per car.	Per ton-mile.	Per car-mile.
		Miles.			Mills.	Cents.
Los Angeles, Calif.	Phoenix, Ariz.	451	[1]$1.045	$627.00	46.3	139
San Francisco, Calif.	do	800	[1]1.045	627.00	26.1	78.3
Betteravia, Calif.	do	655	[1]1.045	627.00	31.9	95.7
Do	El Paso, Tex.	1,020	[1].965	579.00	18.9	56.7
New Orleans, La.	do	1,192	[2]1.080	388.80	18.1	32.6
San Francisco, Calif.	St. Paul, Minn.	2,154	[1]1.025	615.00	10	28.6
Los Angeles, Calif.	Chicago, Ill.	2,231	1.09525	657.00	9.8	29.4

1. Minimum weight 60,000 pounds.

2. Minimum weight 36,000 pounds.

Defendants take the position that the rates on sugar from California producing points to the central and eastern sections of the [128] country are on a subnormal basis due to the necessity of marketing the California product, which greatly exceeds local consumption, in competition with sugar refined at New Orleans and Atlantic seaboard points; that a normal basis of rates would prevent the movement of California sugar because of the great disparity in distances from the competing refineries to the common markets; and that intermediate main-line points are given the benefit of these extremely low competitive rates. They attempt to justify the present rates to Phoenix on the grounds that the volume of movement is small and that market conditions present at El Paso and the other points cited by complainant are not met with at Phoenix. They argue that we recognized the potency of market competition in Fourth Section Violations in Rates on Sugar, 31 I. C. C., 511, by permitting the maintenance of lower rates on sugar from California to Missouri River points than those contemporaneously in effect to intermediate points on the Rock Island east of Tucumcari, N. Mex., in connection with routing, Southern Pacific to El Paso, El Paso & Southwestern to Tucumcari, Rock Island beyond. In that case we required the Southern Pacific to hold the El Paso rate from California as maximum at intermediate points, and denied the Santa Fe authority to charge lower rates from California to Trinidad, Colo., and points east thereof than it contemporaneously maintained to inter-

mediate points. Accordingly, these carriers reduced the main-line rates in Arizona and New Mexico to the level of the rates to El Paso and Trinidad, respectively.

A partial list of the shipments on which reparation is sought shows that 48 carloads moved during the period June, 1919, to August, 1920, inclusive, 34 being routed via Southern Pacific and 14 via Santa Fe. A statement filed by the defendants shows that during the year 1916, 1917, 1919, and the first six months of 1920, 348 cars aggregating 9,423 tons moved from California points to Arizona via Santa Fe, of which 78 cars aggregating 2,229 tons moved to Phoenix.

From Betteravia, which may be taken as fairly representative of the California group, the present rate to Phoenix yields, for a distance of 655 miles, revenues of $627 per car, 95.7 cents per car-mile, and 31.9 mills per ton-mile upon the basis of the tariff minimum weight of 60,000 pounds. A substantial volume of sugar moves from California to Phoenix in carloads. While, no doubt, relatively lower rates are justified to more distant points where the force of market competition is controlling, nevertheless, Phoenix is entitled to rates, which, measured by present-day standards, are just and reasonable. If, however, the rates to competitive points are remunerative, then clearly the rates to Phoenix are excessive, even after giving due con- [129] sideration to the volume of traffic handled to the points in question, and the character of the haul into Arizona. The rate of 96.5 cents

from California is carried on the main line of the Southern Pacific for a distance of 400 miles east of Maricopa. The application of the same rate to Phoenix, but 35 miles distant from Maricopa does not appear to be unreasonable. The Southern Pacific and the Arizona Eastern are properly treated as one line in this instance. Pacific Creamery Co. v. S. P. Co., 42 I. C. C., 93, 96.

Complainants contend that the maintenance of rates from California of $1.045 to Phoenix and 96.5 cents to Tucson is unduly prejudicial to Phoenix, to the undue preference and advantage of Tucson. The record shows that Phoenix jobbers sell sugar at several points in territory contiguous to both Phoenix and Tucson, in competition with jobbers located at the latter point. While there is an indication that in some instances the Phoenix jobbers must shrink their profits to compete with Tucson, there is no evidence to show that this results from the difference in rates from California to the two competing points.

Complainants' request for the establishment of through routes and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the lines of the Southern Pacific to and including El Paso is substantially the same as was made in Phoenix Chamber of Commerce v. Director General, 62 I. C. C., 368, and the evidence is identical by reason of the stipulation into this record of the testimony there introduced. In that case we found that the proposed arrangement had not been shown to be necessary or in the public in-

terest and denied the petition. There is no basis for a different finding on this record.

We find that the rates attacked were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed 96.5 cents. There is no evidence of record that complainants made shipments of sugar from California points to Phoenix, and paid and bore charges thereon at rates higher than those herein found reasonable. In the event that such shipments were made, complainants should file statements under rule V of the Rules of Practice, showing the details of such shipments, accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges were paid and borne by complainants. If defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

The prayer for a through route and joint rates from San Francisco by way of Phoenix to Maricopa and points east thereof on the line of the Southern Pacific, to and including El Paso, is denied.

An appropriate order will be entered. [130]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 22d day of June, A. D. 1921.

No. 11532.

Traffic Bureau of the Chamber of Commerce, Phoenex, Ariz.; Hall-Pollock Company, Phoenix, Ariz.; Haas-Baruch & Company, Incorporated, Phoenix, Ariz.; The Melczer Company, Phoenix, Ariz.; and The Arizona Grocery Company, Phoenix, Ariz.

v.

James C. Davis, Director General of Railroads, as Agent; Southern Pacific Company; Arizona Eastern Railroad Company; and The Atchison, Topeka and Santa Fe Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist, on or before September 17, 1921, and thereafter to abstain, from publishing, de-

manding, or collecting their present rates for the transportation of sugar in carloads from California points to Phoenix, Ariz.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 17, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of sugar in carloads from California points to Phoenix, Ariz., rates which shall not exceed 96.5 cents per 100 pounds.

It is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 1.

[Seal] GEORGE B. McGINTY,
Secretary. [131]

Thereupon there was offered in evidence by defendants and received as Exhibit "C", a true and correct copy of the report and order of said Commission in Docket 11442, Traffic Bureau, Douglas Chamber of Commerce v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405, in words and figures as follows: [147]

EXHIBIT "C"

7236

Interstate Commerce Commission

No. 11442

TRAFFIC BUREAU OF DOUGLAS CHAMBER OF COMMERCE AND MINES

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 11, 1921. Decided November 3, 1921.

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1. Class and commodity rates from points on lines of defendants in California to Douglas, Ariz., found not unreasonable or unjustly discriminatory.
2. Class and commodity rates from points in California on lines of defendants to Douglas, found unduly prejudicial to the extent that they exceed corresponding rates contemporaneously in effect from the same points of origin to Bisbee, Ariz., and to certain cross-country points on the Southern Pacific in Arizona and New Mexico.
3. Commodity rates from points on lines of defendants in Oregon and Washington, and points basing thereon, to Douglas, applicable via California junctions, found unduly prejudicial, to the extent that they exceed corresponding rates contemporaneously in effect via California junctions from the same points of origin to El Paso, Tex., and Bisbee.

E. R. Raumaker for complainant.

F. C. Tockle for El Paso Chamber of Commerce; Roland Johnston for Traffic Bureau, Chamber of Commerce, Phoenix, Ariz.; and B. D. Woodward for Murray & Layne Company, interveners.

J. L. Stewart, Boyle & Pickett, E. W. Camp, G. H. Baker, Fred H. Wood, Elmer Westlake, and C. W. Durbrow, for defendants.

REPORT OF THE COMMISSION.

Division 4, Commissioners Meyer, Daniels, Eastman, and Potter.

EASTMAN, Commissioner:

No exceptions were filed to the report proposed by the examiner. We have reached conclusions differing but slightly from those which he recommended.

Complainant is an organization of shippers and receivers of freight located at and in the vicinity of Douglas, Ariz. It alleges that the class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of defendants in California, [133] Oregon, Washington, Idaho, Montana, Utah, Nevada, and British Columbia to Douglas are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. The Murray & Layne Company and the Traffic Bureau, Chamber of Commerce, Phoenix, Ariz., intervened on behalf of complainant. Petitions of intervention on behalf of defendants were filed by the El Paso Chamber of Commerce and by the El Paso Sash & Door Company. The latter, however, did not participate in

the hearing. We are asked to prescribe reasonable and nonprejudicial rates for the future. Rates herein are stated in amounts per 100 pounds, and do not include the general increases of 1920.

Complainant's contentions are that the importance of Douglas, as the jobbing and mining center of southern Arizona and New Mexico and the gateway to ore regions in Mexico, together with its location west of El Paso, Tex., entitle it to lower rates than El Paso from points in California; that, being on the main line of the El Paso & Southwestern, its rates should not exceed those maintained to Bisbee, Ariz., a branch-line point near by; that from San Francisco, Los Angeles, and points grouped therewith its rates are unduly high in comparison with the rates to Tucson, Willcox, and Bowie, Ariz., and to Deming, N. Mex.; that from points in Oregon, Washington, Idaho, Montana, and British Columbia, hereinafter referred to as the northwest, its rates should not exceed those in effect to El Paso; that joint rates should be established from all points in California on the Atchison, Topeka & Santa Fe, hereinafter called Santa Fe, to Douglas via Colton, Calif., or Phoenix, Ariz.; and that there are no circumstances or conditions which justify the publication of joint rates to El Paso and not to Douglas.

While the class and commodity rates from points in the northwest were put in issue, complainant stated at the hearing that if commodity rates were established from that territory to Douglas on the El Paso basis, but not to exceed the rates contemporaneously maintained to Bisbee, this phase of the complaint would be satisfied. Accordingly the class rates from the northwest will not be considered.

Douglas is situated in the extreme southeastern part of Arizona near the Mexican border on the main line of the El Paso & Southwestern, 217 miles west of El Paso and 124 miles southeast of Tucson, the western junction of that carrier with the Southern Pacific. It is 22 miles east of Osborn, Ariz., from which point a branch line of the El Paso & Southwestern extends north 7 miles to Bisbee. The Southern Pacific is the short line from Tucson to El Paso. The line [134] of the El Paso & Southwestern is somewhat longer, as it dips down to the Mexican border. Douglas is in competition with Tucson and Bisbee, and with Willcox, Bowie, and other cross-country points on the Southern Pacific, 60 to 80 miles distant by air line, for the trade of the intervening territory.

In 1888 the Arizona & South Eastern was constructed from Bisbee to Fairbank, Ariz., and about 1894 it was extended to Benson, Ariz., where connection was made with the Southern Pacific. Some years later the Southwestern Railroad of Arizona was built from Don Luis, Ariz., to Douglas, thus providing a through route from Benson to Douglas. In 1901 these lines were consolidated under the name of the El Paso & Southwestern, which in 1902 was extended into El Paso. In the same year the right of way was changed in such a way as to make Bisbee a branch-line point.

In 1901 rates between Douglas and California points were made by double combination on Benson and Don Luis. In 1903 joint class and commodity rates were established between points in California and stations on the El Paso & Southwestern, based

on the combination of locals on Fairbank. The class rates were uniformly 15 cents higher to Douglas than to Bisbee. This basis continued until 1913 when the El Paso & Southwestern was extended into Tucson, thus providing a new route for the interchange of traffic with the Southern Pacific, at which time, with a few exceptions, rates applicable from California points to El Paso via the Southern Pacific were met by the El Paso & Southwestern, and held as maxima at Douglas and all other intermediate points, Tucson to El Paso.

While rates from the east are considerably higher to Douglas than to El Paso, rates from California are either the same to both points or slightly lower to Douglas, and certain rates from the northwest are considerably higher to Douglas than to El Paso. Complainant contends that Douglas is entitled to the same advantage on traffic from the west that El Paso has on traffic from the east, particularly in the case of the shorter hauls. While the Murray & Layne Company strongly supports this contention, the El Paso Chamber of Commerce urges that no changes of this character are warranted, since Douglas and El Paso have had practically the same rates from the west for several years, and business has become adjusted to these conditions.

Complainant compares the class rates from San Francisco and Los Angeles, representative California points of origin, to Douglas, with the corresponding rates to Tucson, Willcox, Deming, and El Paso, typical distributing points which compete with Douglas. Complainant's comparisons, together with class rates from the same points of [135] origin to certain other destinations near Douglas, are shown in the subjoined statement:

Haul	Distance	Classes.									
		1	2	3	4	5	A	B	C	D	E
San Francisco and group to—	Miles	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Tucson, Ariz.	971	237.5	196.5	171.5	142.5	116.5	116.5	95	81.5	75	65
Benson, Ariz.	1,020	269	225	200	167.5	137.5	137.5	114	99	90	76.5
Fairbank, Ariz.	1,038	269	225	200	171.5	141.5	141.5	115	99	90	77.5
Willcox, Ariz.	1,062	269	225	200	181.5	147.5	156.5	122.5	104	94	80
Bowie, Ariz.	1,085	269	225	200	181.5	147.5	159	126.5	104	96.5	81.5
Olga, Ariz.	1,094	269	225	200	181.5	147.5	159	130	104	97.5	82.5
Lordsburg, N. Mex.	1,135	269	225	200	181.5	147.5	159	134	104	100	87.5
Deming, N. Mex.	1,195	269	225	200	181.5	147.5	159	134	104	100	87.5
El Paso, Tex.[1]	1,283	294	250	200	181.5	147.5	159	134	104	100	87.5
Do.[2]	1,312										
Douglas, Ariz.	1,095	294	250	200	181.5	147.5	159	130	104	97.5	82.5
Bisbee, Ariz.	1,080	294	250	200	181.5	147.5	159	126.5	104	95	81.5
Osborn, Ariz.	1,073	294	250	200	181.5	147.5	159	126.5	104	95	80

Haul	Distance	Classes.									
		1	2	3	4	5	A	B	C	D	E
Los Angeles and group to—	Miles	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Tucson, Ariz.	502	206.5	171.5	152.5	124	104	104	82.5	69	62.5	52.5
Benson, Ariz.	551	237.5	204	181.5	149	125	125	101.5	86.5	77.5	64
Fairbank, Ariz.	570	237.5	204	182.5	152.5	129	129	102.5	86.5	77.5	65
Willcox, Ariz.	593	237.5	204	182.5	167.5	135	144	110	92.5	81.5	67.5
Bowie, Ariz.	617	237.5	204	182.5	167.5	135	146.5	114	94	84	69
Olga, Ariz.	625	237.5	204	182.5	167.5	135	146.5	117.5	95	85	70
Lordsburg, N. Mex.	667	237.5	204	182.5	167.5	135	146.5	124	104	94	75
Deming, N. Mex.	726	237.5	204	182.5	167.5	135	146.5	129	104	94	75
El Paso, Tex.[1]	814	294	250	189	167.5	135	146.5	129	104	94	82.5
Do.[2]	843										
Douglas, Ariz.	626	285	245	189	167.5	135	146.5	117.5	95	85	70
Bisbee, Ariz.	611	275	236.5	189	167.5	135	146.5	114	92.5	82.5	69
Osborn, Ariz.	604	272.5	234	189	167.5	135	146.5	114	92.5	82.5	67.5

[1] Via Southern Pacific.

[2] Via Southern Pacific and El Paso & Southwestern

On traffic to the above points the San Francisco rate is blanketed over an origin territory about 400 miles in length, while the Los Angeles rate covers points within a radius of about 125 miles. Complainant not only contends that the rates to Douglas are too high from all points in these groups, but that greater reductions should be made from points in the eastern portion of the originating territory than from points in the western portion. This extensive grouping of points of origin gives interior points the benefit of many markets in Pacific coast territory. Moreover, any change in the basis to Douglas, such as is suggested, would result almost inevitably in a similar disturbance of the rates to many other points in Arizona and the southwest, which rates are not in issue here. The evidence of complainant as to the desirability of breaking up these origin groups is too slight to warrant findings of such far-reaching importance.

As the above table shows, destination points are also extensively grouped, rates from San Francisco and Los Angeles to El Paso being blanketed back, in many instances, to and beyond Douglas. The distance Los Angeles to Douglas is 74.2 per cent of the distance [136] Los Angeles to El Paso via Southern Pacific, Tucson, El Paso & Southwestern beyond, and 77 per cent of the distance over the direct line of the Southern Pacific, while the class rates from Los Angeles to Douglas range from 84.7 to 100 per cent of the rates to El Paso. From San Francisco the distances to Douglas are 83.5 and 85.4 per cent of the respective distances to El Paso,

while the Douglas rates vary from 94.3 to 100 per cent of the El Paso rates. Complainant insists that the factor of distance should be given more weight in this destination adjustment. Defendants assert that the San Francisco-El Paso rates are depressed by the rates from St. Louis. There is little doubt but that the rates to El Paso are subject to certain competitive influences which do not affect the rates to Douglas.

Class rates from the San Francisco and Los Angeles groups are generally blanketed to points on the line of the Southern Pacific between Benson and Deming, the extent of the blankets varying with the different classes and narrowing as the lower classes are reached. The first five classes are grouped from San Francisco for average distances of about 240 miles, and from Los Angeles for average distances of about 215 miles. For example, from San Francisco the first-class rate is blanketed from Amole, Ariz., to Afton, N. Mex., a distance of 239 miles; from Los Angeles the first-class rate is blanketed from Amole to Carne, N. Mex., a distance of 199 miles. The mean point of the blankets is near Lordsburg, N. Mex., this point being 41 miles farther from the origin territory than is Douglas. From San Francisco, as will be noted from the foregoing table, the rates on classes D and E are higher to Lordsburg than to Douglas, while on the first two classes the reverse is true. The other classes are the same. From Los Angeles classes B, C, D, and E are higher to Lordsburg than to Douglas, while the first three classes are considerably lower. The intermediate

classes, 4, 5, and A, are the same to both destinations. From both San Francisco and Los Angeles the first five classes are blanketed from Willcox to Deming, a distance of 133 miles. From Los Angeles classes 1, 2, and 3 are 47.5, 41, and 6.5 cents higher, respectively, to Douglas than to Lordsburg; and from San Francisco classes 1 and 2 are each 25 cents higher to Douglas. The defendants offered no explanation of these inconsistencies.

In the following statement the differences in the rates from California, Douglas under El Paso, and Los Angeles under San Francisco are compared with similar differences in connection with the rates to Lordsburg: [137]

	Classes.									
	1	2	3	4	5	A	B	C	D	E
From Los Angeles:										
Douglas under El Paso	9	5	0	0	0	0	11.5	9	9	12.5
Lordsburg under El Paso	56.5	46	6.5	0	0	0	5	0	0	7.5
From San Francisco:										
Douglas under El Paso	0	0	0	0	0	0	4	0	2.5	5
Lordsburg under El Paso	25	25	0	0	0	0	0	0	0	0
Los Angeles under San Francisco:										
To Douglas	9	5	11	14	12.5	12.5	12.5	9	12.5	12.5
To Lordsburg	31.5	21	17.5	14	12.5	12.5	10	0	6	12.5

From the above comparisons it will be observed that the spread between the rates to Douglas and the rates to El Paso, where there is any spread, is greatest in the lower classes, which is contrary to accepted principles of rate making. The reverse is true of the Lordsburg rates. These discrepancies are reflected in the differences between the San Francisco and Los Angeles rates to Douglas. The distance to Douglas from San Francisco exceeds that from Los Angeles by 469 miles. To Lordsburg rates from Los Angeles range from 31.5 cents, first class, to nothing at class C under the San Francisco rates. Moreover, to stations on the El Paso & Southwestern, Tucson to Osborn, including Bisbee, the first-class rates from Los Angeles range from 19 to 31.5 cents under the corresponding rates from San Francisco. Defendants urge that rates from northern California to Douglas are affected by water competition between San Francisco and Los Angeles. However, this fact does not explain the inconsistency between the Douglas rates on the three highest classes and corresponding rates to comparable Southern Pacific and El Paso & Southwestern points. Water competition should affect like rates similarly to all points in the same general territory.

Complainant compares the revenues per ton-mile yielded by the first-class rates from San Francisco and Los Angeles to Douglas with earnings under the corresponding rates to Tucson, Willcox, Deming, and El Paso, as follows:

From—	To Tucson.	To Willcox.	To Douglas.	To Deming.	To El Paso.
	Mills	Mills	Mills	Mills	Mills
Los Angeles	82.27	80.10	91.05	65.43	[1]69.75 [2]72.23
San Francisco	48.92	50.66	53.70	45.02	[1]44.82 [2]45.83

1. Via El Paso & Southwestern. 2. Via Southern Pacific.

The distances from California points to Douglas range from 500 to 1,200 miles. The haul to Douglas involves one additional line not [138] required in the movement to cross-country points on the Southern Pacific. Defendants contend that this fact alone is sufficient to warrant the higher basis at Douglas. They do not explain why this fact, if controlling, affects only a few of the higher classes, nor why the rates in some of the lower classes are less to Douglas than to Deming and certain other of the cross-country points. They offered no evidence to show that the added line to Douglas involves an increase in the cost of service over that to comparable Southern Pacific points, and the record discloses no other transportation conditions which would warrant the maintenance of higher rates to Douglas. As said in Coakley v. Director General, 59 I. C. C., 141, 144, "the mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul." It is well established that for distances in excess of 500 miles the fact that the service is by two lines is largely negligible. Pacific Creamery Co. v. S. P. Co., 42 I. C. C., 93, 96.

From the facts of record it seems clear that the rates to Douglas on classes 1 and 2 from the San Francisco group and classes 1, 2, and 3 from the Los Angeles group are unduly prejudicial to Douglas, to the undue preference of Willcox, Bowie, Deming, and other competing cross-country points on the Southern Pacific to which the corresponding class rates are blanketed.

Complainant's main contention as to commodity rates is that the location of Douglas, 217 miles west of El Paso, entitles it to rates proportionately lower than are contemporaneously applicable to El Paso. It shows that rates from the east on various commodities, including canned goods, sugar, and soap, are considerably higher to Douglas than to El Paso, and urges that the converse should be true on traffic from the west.

Commodity rates to Douglas are generally the same from both Los Angeles and San Francisco, and in some instances they apply also from Portland, Oreg. Except to points on the El Paso & Southwestern, the blankets of origin on certain commodities extend to Seattle, Tacoma, and other Washington points. The rates in many instances are blanketed, as to points of destination, practically across the country. Rates of 90.5 cents on canned goods and 87.5 cents on canned salmon are blanketed from Gila, Ariz., to the Atlantic seaboard; and the rate of $1.065 on dried fish extends east from Maricopa, Ariz., in similar manner. Rates on canned milk, beans, sugar, and coffee are the same from San Francisco and Los Angeles to Douglas, El Paso,

and beyond. In a few instances commodity rates from San Francisco and Los Angeles are graded to Douglas and other points in the same general territory. [139]

From the numerous comparisons submitted it appears that the commodity rates from California to Douglas, while higher in some instances than those to competing points, are generally the same. As mining is the principal industry of this section, there is a considerable movement of mine timbers and high explosives from California to Bisbee and Douglas. The rate on mine timbers, from Los Angeles is 27 cents to Bisbee and 32.5 cents to Douglas; from San Francisco the rate is 39 cents to Bisbee and 48.5 cents to Douglas. On high explosives the rate is $2.43 from San Francisco to Douglas and $2.365 to Bisbee. Obviously Douglas is at a disadvantage in the distribution of these commodities in competition with Bisbee. Similar adjustments obtain in connection with a few other commodities. The record shows that there are certain commodities, such as salt and rough timbers, which take higher rates from California to Douglas than to cross-country points on the Southern Pacific which compete with Douglas in the intermediate territory.

Defendants state that the rates to all points on the El Paso & Southwestern are made on the lowest combination of locals, the transcontinental rates being held as maxima to avoid fourth section violations, and this, they contend, gives that section better rates than it is rightfully entitled to. They

deny any intention of favoring Bisbee over Douglas, and explain that the rate adjustment to Bisbee was made when it was a main-line point; that when Bisbee became a branch line point, its rates were allowed to remain, in most instances, on the main line basis. They urge that the length of time that the adjustment has been in effect justifies its continuance; that the rates to Bisbee are reasonable and should not be disturbed; and that the rates to Douglas, because of the greater distance, may reasonably be higher.

Traffic from the west destined to Bisbee must be switched out of main-line trains at Osborn, or Don Luis and hauled over a branch line about 7 miles in length, with a maximum grade of 3 per cent. The altitudes of Osborn, Bisbee, and Douglas are 4,675, 5,300, and 3,966 feet, respectively. The haul from Osborn to Douglas is down grade practically all the way. From these facts it is clear that the additional distance of 15 miles, Douglas to Bisbee, does not warrant a difference in the rates from California for distances ranging from 500 to 1,200 miles. And the record discloses no good reason why in those few instances where higher rates apply to Douglas than to Lordsburg and other cross-country points taking the same rates, a like parity should not be brought about.

This same general situation obtains with respect to a number of commodity rates from the northwest, Bisbee, in such cases, being [140] accorded lower rates than Douglas. Furthermore, as joint rates

are published from the northwest on certain commodities to El Paso via the Southern Pacific direct, and are not applicable in connection with the El Paso & Southwestern, it happens in these instances that the rates to Douglas, being on a combination basis, are higher. For example, from Seattle, Tacoma, and other northwestern points to El Paso, Southern Pacific points in Arizona and New Mexico, and points east thereof, the rates on canned goods are 90.5 cents, minimum 60,000 pounds, and $1.065, minimum 40,000 pounds, while the rates to Douglas are 15 cents higher. From Anacortes, Bellingham, Blaine, and other Washington points the rate on canned salmon to El Paso is 87.5 cents. This rate is blanketed from Colton, Calif., to the Atlantic seaboard, being applicable to Tucson, Willcox, Bowie, and other Southern Pacific points which compete with Douglas, while to the latter point the rates are considerably higher, being made on Portland combination. The rates on various other commodities are similarly adjusted. As hereinbefore stated, complainant agreed that as to rates from the northwest its complaint would be satisfied if Douglas were accorded the El Paso basis, but in no case higher than the rates contemporaneously maintained to Bisbee, and we see no reason why, with respect to rates applying via California junctions, this adjustment should not be made.

Many of the commodity rates from the northwest to El Paso and transcontinental territory, however, apply only via Utah and Colorado junctions, and rates so limited do not apply to points west of El

Paso. Complainant contends that all of these rates should be made to apply by way of California junctions and the El Paso & Southwestern, so that Douglas may have the benefit of the El Paso basis. No sufficient reason is shown of record for requiring the establishment of these rates to Douglas via California junctions.

Complainant submitted evidence intended to show that the application from California to Douglas of class rates on certain commodities, higher than commodity rates contemporaneously in force on like traffic from similar points of origin to transcontinental destinations east of Douglas produces violations of the long-and-short-haul clause of the fourth section of the act. Attention is also directed to the fact that the mixtures on certain traffic moving under commodity rates from California points to Douglas in mixed carloads, are restricted as compared with the mixtures permitted on similar traffic moving to points in transcontinental territory east of Douglas. These transcontinental commodity rates are published subject to rule 77 of Tariff Circular 18-A, which is a substantial compliance with the requirements of the fourth section. Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 247. [141]

Complainant compares the rates assailed with rates from Chicago, Kansas City, Denver, and other points to El Paso, from Pacific coast points to Utah common points, and between other points, for the purpose of showing the unreasonableness of the rates to Douglas. These comparisons, however, have little

probative value, as they apply on traffic which in most instances is highly competitive and subject to influences not present in the movement from the Pacific coast to Douglas.

Complainant urges that the minimum weights applicable on certain commodities from California points to Douglas are unreasonable and unduly prejudicial because they are higher than those which apply on the same commodities between California and Denver, between California and Utah common points, and from Chicago, Denver, New Orleans, and other points to El Paso. The minimum weights under attack are also applicable from California to El Paso, Bisbee, and Southern Pacific cross-country points which are in competition with Douglas. No evidence was submitted as to the actual loading or other pertinent factors affecting the minima assailed or those compared; and no showing is made that Douglas is affected adversely by the difference in minimum weights.

The Santa Fe meets the Southern Pacific rates from California to Douglas via its circuitous route through Deming. Complainant contends that through routes should be established from points on the Santa Fe in California to Douglas, either via Santa Fe to Colton, Southern Pacific and El Paso & Southwestern beyond, or via Santa Fe to Phoenix, Arizona Eastern, Southern Pacific, and El Paso & Southwestern beyond. The principal reason advanced to support this request is that the time consumed in the movement via the Deming route is excessive. Complainant submitted a number of

California originating points as representative, all of which have through routes and joint rates in connection with the Southern Pacific. Complainant was unable to name any California points from which joint rates do not apply to Douglas via the Southern Pacific over direct routes. The evidence on this point is meager and indefinite, and fails to support the contention that the through routes from California points to Douglas are not reasonably adequate.

No evidence was submitted to support the allegation under section 2 of the act.

It is clear that there is a closer geographical and economic relationship between Douglas, Bisbee, and cross-country points on the Southern Pacific than is reflected in some of the class and commodity rates from California, and in certain of the commodity rates from the northwest to those points, and that defendants' present rate ad- [142] justment to this extent unduly prejudices Douglas and unduly prefers Bisbee and certain Southern Pacific points. No sufficient evidence has been presented that the rates attacked are unreasonable, or that they are unduly prejudicial by reason of the fact that they are not lower than the corresponding rates to El Paso. This finding is confined to the strict issue before us and to the evidence of record and is not to be understood as direct or indirect approval of the adjustment under which certain commodity rates eastbound are blanketed from Arizona points all the way to the Atlantic seaboard.

Upon the record we find that the rates assailed are not unreasonable or unjustly discriminatory, but that the class rates from points on lines of defendants in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the class rates contemporaneously maintained from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that the commodity rates, except on fresh fruits and vegetables, from said points in California to Douglas are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to Bisbee, Ariz., and to Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg; that commodity rates, except on fresh fruits and vegetables, from points on lines of defendants in Oregon and Washington and points basing thereon, to Douglas, applicable via California junctions, are, and for the future will be, unduly prejudicial, to the extent that they exceed or may exceed the rates contemporaneously maintained on like commodities from the same points of origin to El Paso, Tex., and to Bisbee, Ariz. The foregoing finding should not be construed as covering rates from British Columbia, as no evidence is before us respecting the rates covering that portion of the haul within the United States.

An order will be entered in accordance with these findings. [143]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 3d day of November, A. D. 1921.

No. 11442.

Traffic Bureau of the Douglas, Ariz., Chamber of Commerce and Mines,

v.

The Atchison, Topeka & Santa Fe Railway Company; Camas Prairie Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; The Great Northern Railway Company; Los Angeles & Salt Lake Railroad Company; Northern Pacific Railway Company; Northwestern Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company; Pacific Coast Railroad Company; Rio Grande, El Paso & Santa Fe Railroad Company; Southern Pacific Company; Southern Pacific Company—Atlantic Steamship Lines; Spokane, Portland & Seattle Railway Company; Sunset Railway Company; Tidewater Southern Railway Company; Virginia & Truckee Railway; The Western Pacific Railroad Company; Bay Point & Clayton Rail-

road Company; British Columbia Electric Railway Company, Limited; California Central Railroad Company; California Western Railroad & Navigation Company; Canadian National Railways; The Canadian Pacific Railway Company; Cement, Tolenas & Tidewater Railway; Chelsea Tug & Barge Company; Clatskanie Transportation Company; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & St. Joe Transportation Company; Crows Nest Southern Railway Company; Diamond "O" Navigation Company; Frank Waterhouse & Company; Haekins Transportation Company; Hartford Eastern Railway Company; Inland Empire Railroad Company; Island Belt Steamship Company; J. Kellog Transportation Company; James & Marmont; McCloud River Railroad Company; Nelson & Fort Sheppard Railway Company; Pacific Electric Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Portland Railway, Light & Power Company; Puget Sound Navigation Company; Sacramento Northern Railroad; San Diego & Arizona Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Sierra Railway Company of California; Skagit River Navigation & Trading Company; Skinner Car Ferry Company; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Tijuana & Tecati Railway Company; Trona Railway Company; Vancouver-Victoria & Eastern

Railway & Navigation Company; Visalia Electric Railroad Company; Walla Walla Valley Railway [144] Company; Washington, Idaho & Montana Railway Company; Western Transportation Company; Yakima Valley Transportation Company; and Yosemite Valley Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before February 21, 1922, and thereafter to abstain, from publishing, demanding, or collecting class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in California, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in Oregon and Washington and points basing thereon, to Douglas, Ariz., which shall exceed the class and commodity rates prescribed in the next succeeding paragraphs.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before February 21, 1922, upon no-

tice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply class rates, and commodity rates, except on fresh fruits and vegetables, from points on the lines of the defendants in California to Douglas, Ariz., which shall not exceed the class rates and corresponding commodity rates contemporaneously in effect from the same points of origin to Bisbee, Ariz., Lordsburg, N. Mex., and points on the Southern Pacific taking the same rates as Lordsburg.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before February 21, 1922, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply commodity rates, except on fresh fruits and vegetables, from points on the lines of said defendants in Oregon and Washington, and points basing thereon, to Douglas, Ariz., via California junctions, which shall not exceed corresponding commodity rates contemporaneously in effect from the same points of origin and [145] applicable via said California junctions to El Paso, Tex., and Bisbee, Ariz.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, Division 4.

[Seal] GEORGE B. McGINTY,
Secretary. [146]

Thereupon there was offered in evidence by defendants, and received as Exhibit "D", a true and correct copy of the report and order of said Commission in Docket 13139, Graham etc. Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134, in words and figures, as follows: [161]

EXHIBIT "D"

No. 13139.

GRAHAM & GILA COUNTIES TRAFFIC ASSOCIATION v. ARIZONA EASTERN RAILROAD COMPANY ET AL.

Submitted January 24, 1923. Decided June 27, 1923

Class and commodity rates to points on the Globe division of the Arizona Eastern Railroad from interstate points east and west thereof found not unreasonable but found unduly prejudicial. Undue prejudice ordered removed.

Lloyd F. Jones and F. A. Jones for complainant.

Fred H. Wood, James R. Bell, C. W. Durbrow, Elmer Westlake, J. E. Lyons, George P. Bullard, and Henley C. Booth for defendants.

D. R. Johnson for Arizona Corporation Commission; and O. T. Helpling for Riverside Portland Cement Company, interveners.

REPORT OF THE COMMISSION.

Division 2, Commissioners Daniels, Esch, and Campbell.

Esch, Commissioner:

A report was proposed by the examiner, to which

exceptions were filed by defendants, and oral argument thereon was heard by us.

In Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C., 573, submitted November 6, 1914, and decided July 7, 1916, the complainant attacked, as unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediates clause of the fourth section, commodity rates from points in California and class and commodity rates from eastern transcontinental groups to points in Arizona on the Globe division of the Arizona Eastern Railroad. We declined to consider the allegations of unjust discrimination and undue prejudice because of lack of particularity in the complaint. We further held that the rates in effect were not unreasonable and that the alleged violation of section 4 was without basis, because there was in effect a rule that where the aggregate of the intermediate rates made less than the joint through rate the former should be applied as the lawful rate. The same rule has since been and is now in effect.

The complaint in the instant case, brought by the same complainant, renews the charges made in the former case, also brings in issue the class rates from California and the class and commodity [148] rates from points in Oregon and Washington, and alleges undue preference of El Paso, Tex., Phoenix, Mesa, Florence, Superior, and Flagstaff, Ariz., and other destinations taking relatively lower rates than points on the Globe division. Under the last allegation complainant introduced evidence tending to

show undue preference of Ajo, Sasco, and Nogales, Ariz., and Cananea, Mexico, without objection by defendants, who also introduced evidence intended to disprove any undue preference of those points. Upon oral argument defendants objected to any finding of undue preference of the last-named points as beyond the issues. They do not claim to have been put at any disadvantage by the failure to specifically name these points in the complaint, and the objection is not sustained. The Arizona Corporation Commission intervened in support of the complaint, and the Riverside Portland Cement Company with respect to the rates on cement from California. The alleged violations of sections 2 and 4 of the act are not supported by the evidence and need not be considered further.

The report in the former case sets forth a complete description of the general bases of rates to points on the Globe division as compared with rates to numerous alleged favored points, the relative distances, the industrial, agricultural, traffic, and transportation conditions, and other pertinent matters. The present report, therefore will deal mainly with changes brought about since the decision in the prior case, amplification of certain matters discussed in the former report, in the light of the present comprehensive record, and with the new issue of undue prejudice and preference.

From 1910 to 1920 the population of Arizona increased from 204,354 to 333,273, from 1.86 to 2.91 per square mile, and from 102.46 to 140.17 per mile of railroad. The principal industries of the State

are copper mining and the raising of live stock. Prior to 1920 cotton was also produced extensively and normally is one of the principal products of the State. Other farm or ranch products produced in considerable quantity are alfalfa, wheat, oats, barley, fruit, and dairy products. There are only a few manufactured products. All of the stations on the Arizona Eastern are in Arizona.

At the present time there are about 30,000 acres of irrigated and cultivated land along the Globe division in the Gila Valley. There has been no considerable increase in the irrigated area in this district since 1914. On the other hand, since 1914, the irrigated area in the Salt River Valley, of which Phoenix is the center, has increased from approximately 188,000 acres to 267,400 acres. There is much divergence between the parties as to the nature and relative quantity of traffic handled by the Globe and Phoenix divisions of the Arizona Eastern. The following table compares the tonnage [149] interchanged with the Southern Pacific at Maricopa and Bowie, its junctions with the Phoenix and Globe divisions, respectively, during the four years preceding 1922:

	1918		1919		1920		1921	
	Globe division	Phoenix division	Globe division	Phoenix division	Globe division	Phoenix division	Globe division[1]	Phoenix division
To Southern Pacific.								
Ore and bullion	182,815	183,497	87,236	44,562	85,307	38,151	29,018	7,557
Live stock	7,950	12,802	2,600	11,524	6,079	9,629	5,653	7,123
Agricultural products	17,155	77,414	24,614	93,967	34,095	33,652	22,440	47,431
All other	15,523	32,471	38,019	37,240	2,376	28,252	8,063	20,132
Total	223,443	306,184	152,469	187,293	127,857	109,684	65,174	82,243
From Southern Pacific.								
Oil	202,663	158,903	169,320	97,439	175,727	92,546	58,352	55,888
Forest products	49,842	59,374	30,314	43,925	58,012	52,389	11,405	15,633
Iron and steel	10,048	5,045	5,642	4,678	14,396	8,214	1,858	5,515
Machinery	1,860	4,400	1,369	1,718	2,283	3,087	1,720	565
Coal and Coke	38,628	1,331	26,208	718	38,835	499	11,904	268
Ore and bullion	43,696	11,252	22,693	18,005	14,098	23,298	3,142	2,523
All other	43,355	78,520	58,634	79,504	47,869	119,906	33,294	112,143
Total	390,092	318,825	309,180	245,987	351,220	299,939	121,675	192,535
Ttl. tonnage handled	613,535,	625,009	461,649	433,280	479,077	409,623	186,849	274,778

[1] Figures for January 1 to November 30 only.

The sharp decline in agricultural products delivered to the Southern Pacific at Maricopa in 1920 was due to the depression in the cotton industry that year, the cotton crop prior to that time having comprised a large proportion of the agricultural tonnage from the Salt River Valley.

While it still appears, as stated in the former report, that the Globe division "is dependent chiefly upon products of the mines for its revenue," it is evident that the Phoenix division is also dependent upon mines for a large part of its tonnage. Moreover, while the tonnage of agricultural products and live stock moving over the Globe division is not as large as that over the Phoenix division, nevertheless it is considerable and affords a permanent source of revenue. The foregoing table shows also that the total tonnage hauled does not vary greatly as between the two divisions. The total traffic handled over either division has not shown a steady increase since 1913 but has fluctuated widely from year to year, in which respect it has followed the general trend of traffic on the Southern Pacific in Arizona.

The evidence presented herein confirms what was said in the former report relative to the difficult transportation conditions prevailing on the Globe division. The maximum grade on that division is 3.5 per cent, from Miami to Live Oak, 2.5 miles. Other grades [150] are, from Globe to Pinal, 2.28 miles, 2.3 per cent; from Cutter to Pinal, in the opposite direction, 5.6 miles, 2.2 per cent; and from San Carlos to Bowie, 92.5 miles, a maximum of 1

per cent. The maximum grade on the Phoenix division between Maricopa and Phoenix is 0.49 per cent, from Sacate to Maricopa, 8 miles; on the Buckeye branch of the Phoenix division between Phoenix and Hassayampa, 0.5 per cent for about 16 miles; and on the Phoenix & Eastern Railroad under lease by the Arizona Eastern, between Phoenix and Winkelman, except for about 500 feet through a tunnel, 0.52 per cent. Maximum grades on the main line of the Southern Pacific are, between Aurant, Calif., and Yuma, Ariz., 2 per cent; between Yuma and Tucson, Ariz., 1 per cent; and between Tucson and Rio Grande, N. Mex.-Tex., 1.4 per cent.

From 1913 to 1920, inclusive, the net railway operating income of the Arizona Eastern, including the Phoenix & Eastern, yielded from 1.374 to 8.699 per cent on its book value. In the first 11 months of 1921 it sustained an operating deficit of $65,513.58. The operating ratio for the period from 1913 to November 30, 1921, ranged from 50.01 to 88. On June 30, 1915, the Arizona Eastern and the Phoenix & Eastern combined had a book value of $19,227,648.08, while their tentative valuation as of the same date has been fixed by us at $13,392,214.

From 1913 to 1920, inclusive, the return on the book value of the Southern Pacific ranged from 3.22 to 5.37 per cent, and the operating ratio from 58.87 to 80.63. Pertinent statistics of rail-line operations of the Arizona Eastern, Southern Pacific, and other lines are compared below.

	Freight revenue per mile of road		Revenue ton-miles per mile of road		Operating ratio	
	1919	1920	1919	1920	1919	1920
Arizona Eastern	$7,566.18	$8,128.82	323,259	331,312	77.40	81.11
Southern Pacific:						
Arizona intrastate	24,030.16	24,812.35	2,229,502	1,926,483	70.31	66.09
System	15,926.39	17,678.01	1,217,959	1,249,139	76.22	80.57
Atchison, Topeka & Santa Fe:						
Arizona intrastate	15,081.33	17,185.42	1,247,126	1,324,167	70.11	83.07
System	14,358.80	16,235.97	1,147,410	1,186,479	72.54	82.82
El Paso & Southwestern:						
Arizona Intrastate	7,910.52	7,759.55	576,887	521,887	76.41	82.91
System	9,712.52	10,908.39	770,855	854,294	69.64	72.66
Chicago, Rock Island & Pacific	9,678.99	11,708.31	884,991	988,670	86.95	94.63

The annual rental paid by the Arizona Eastern to the Phoenix & Eastern for the use of the 91.86 miles of track of the latter between Phoenix and Winkelman in 1910 was $35,550.55, and has been increased in each successive year, except one, to and including 1920, when the amount paid was $230,-133.78. [151]

The rates hereinafter mentioned are those in effect at the time of the hearing, January 18, 1922, stated in cents per 100 pounds. Class rates from California points to points on the Globe division are made by combination on Bowie. To Ajo, terminus of the Tucson, Cornelia & Gila Bend Railroad, an independent line extending 44 miles from Gila Bend, Ariz., junction point with the Southern Pacific, joint through class rates are in effect, and

the difference between the rates to Gila Bend and to Ajo is only about 25 per cent of the local rates from and to the same points. To Nogales, on a branch line of the Southern Pacific, 66 miles from Tucson, junction point with the main line, rates on the first three classes are constructed by the use of arbitraries over the junction-point rates, which are materially lower than the local rates from Tucson to Nogales. Rates on other classes are constructed on the full combination. The main-line rates on all classes are extended to Mesa, on the Phoenix & Eastern Railroad, or so-called Hayden branch of the Arizona Eastern, 34 miles from Maricopa.

The situation as to commodity rates from California to points on the Globe division, as compared with rates to El Paso, Phoenix, and Nogales, is adequately set forth at pages 575-576 of the former report. Substantially the same relative situation exists to-day. It is sufficient here to call attention to the fact that the junction-point rates are generally extended to Ajo, Mesa, and Nogales, and on some commodities to Florence, which is 36 miles east of Mesa on the same line. On some commodities the rates are blanketed, not only to all main-line and many branch-line and independent-line points in Arizona, but also to eastern transcontinental Groups J to A, inclusive, so that the rates from California to points on the Atlantic seaboard are lower than to Globe division points in Arizona. For instance, the rate on dried fruits from Los Angeles, Calif., to Ajo, Mesa, Phoenix, and Nogales, to main-line points in Arizona, to El Paso, and to trans-

continental Groups J to A is $1.25, while to Safford, on the Globe division, it is $1.62, to Globe $1.94, and to Miami $1.97. On some commodities, comprising generally those used in the mining industry, the main-line rates or rates considerably lower than the combinations on Bowie have been extended to Globe division points.

On the other hand, defendants show that class and commodity rates from San Francisco, Calif., and Los Angeles to East Ely, Nev., on the Nevada Northern Railway, 140 miles from Cobre, Nev. junction point with the main line of the Southern Pacific from Ogden, Utah, to San Francisco, and to Tonopah, Nev., on the Tonopah & Goldfield Railroad, 71 miles from Hazen, Nev., junction point [152] with the same line of the Southern Pacific, are substantially higher than the junction-point rates. Comparisons between commodity rates from California to East Ely and Globe are discussed at page 578 of the former report. Both the Nevada Northern and the Tonopah & Goldfield are independent lines controlled by mining companies. Their traffic is largely derived from the mines which they serve, and that of the former is relatively light as compared with the Arizona Eastern.

Very little evidence was introduced regarding the rates from points in Oregon and Washington, but it appears that the situation there is similar to that with respect to the rates from California, at least on some commodities.

The situation as to class and commodity rates from eastern transcontinental groups to points on

the Globe division, as compared with those to mainline and branch-line points in Arizona, with rates to branch line points in California, and class rates to Winnemucca, Nev., is fully described in the former report at pages 580 to 586. Evidence presented by complainant in the instant case confirms much of what is there said and need not be reviewed in detail. It will suffice to direct attention to additional matters disclosed by the present record. The spread between the rates to points on the Globe division and other points indicated has, of course, been increased by the percentage increases made on June 25, 1918, and August 26, 1920.

The joint through rates to Globe division points are constructed by adding arbitraries to the joint through rates to Bowie, except on some commodities used in the mining industry. Until June 20, 1921, these arbitraries were generally the same as the local rates from Bowie. On that date a substantial increase was made in the local rates, but the arbitraries were not increased. By schedules filed to become effective May 15, 1922, defendants proposed to increase the arbitraries to a parity with the local rates, but upon protest by the complainant herein, the proposed increased rates were suspended in Investigation and Suspension Docket No. 1555. Subsequently defendants were permitted to cancel the suspended schedules, and the proceeding was discontinued.

Joint through commodity rates apply from eastern groups to Ajo and Sasco, which are generally only slightly higher than the mainline rates of the

Southern Pacific. Sasco is on the Arizona Southern Railroad, an independent short line, extending from Red Rock, Ariz., junction with the main line of the Southern Pacific to Silver Bell, Ariz., 21 miles. Sasco is about 8 miles from Red Rock. From the East commodity rates are generally maintained to Cananea, on the Southern Pacific of Mexico, 20 miles from Naco, Ariz., where that line connects with the El Paso & Southwestern, on a parity with [153] Bowie and other main-line points of the Southern Pacific in Arizona. The distance from Kansas City, Mo., to Cananea is 1,211 miles, as compared with 1,147 miles to Bowie and 1,271 miles to Globe.

The position taken by complainant is that where the rates are graded to points on the main line east and west of Bowie they should be similarly graded for like distances from Bowie to Globe division points, and where blanketed the junction-point rates should be extended to Globe division points not more distant from Bowie than the extent of the blanket from Bowie.

A number of witnesses engaged in business at various points on the Globe division testified as to the severe competition experienced from merchants and jobbers at points on the Phoenix division and on the Atchison, Topeka & Santa Fe, herein called the Santa Fe, who, by reason of their more advantageous freight rates, were able to haul their goods across country by truck and enter the markets at Globe division points. For the same reason such merchants and jobbers have been able to do

business at country points not served by rail lines, which are much nearer to the Globe division.

The effect of water competition upon the rates to Nogales and El Paso is referred to at page 584 of the report in the former case. It does not appear from the present record that any traffic has moved by water into Guaymas, Mexico, and from that point to Nogales for several years.

Defendants show that class rates from Kansas City, St. Louis, Mo., and Chicago, Ill., to East Ely and Tonopah are made by combination on the junction points; that rates from the same origin points to Clifton, Ariz., on a branch of the El Paso & Southwestern, formerly the Arizona & New Mexico Railroad, are generally only slightly less than the full combination on the junction point; and that rates to Paragon, Idaho, on a branch line of the Oregon-Washington Railroad & Navigation Company, 33 miles from Enaville, Idaho, junction point with the main line, are substantially higher than the junction-point rates. Complainant directs attention to numerous branch-line points in Idaho to which the main-line rates are applied. It is conceded that from the East the main-line rates are usually extended to branch-line points in California but defendants maintain that this is a situation that has been brought about through competitive influences beyond their control.

The rates to Cananea, Sasco, and Ajo were established and have been maintained by agreement or understanding between the Southern Pacific and the mining companies operating at those points. It

is said that the rates to Cananea have been held down by potential water competition through the port of Guaymas, and that it has been necessary to accord a favorable basis of rates to that point [154] because the mines located there have experienced great difficulty in keeping in operation. Practically all of the traffic moving to and from Cananea is incident to the mining industry at that point.

The agreement relative to the rates to and from Ajo was entered into prior to the construction of the Tucson, Cornelia & Gila Bend in 1915, and was made in view of the contemplated construction of that line by other routes which would have drawn the traffic away from the Southern Pacific. The relatively low rates accorded that point comprise not only rates on commodities essential to the mining industry but also on practically all class and commodity traffic. Defendants state that the rates to Sasco will probably be canceled, due to the dismantling of the plant at that point.

By understanding with the companies operating mines on the Globe division, joint through rates on mining supplies and products of the mines were originally established and have been maintained to points on that line. Defendants reiterate the explanation contained in the former report of their rate policy on the Globe division, viz:

> * * * that low rates on mining supplies and mining products are necessary to enable the mines at Globe and Miami to compete with other mines. To put it in another way, the

carriers contend that low rates on mining supplies and mining products are essential to the life of the mining community, but that such is not the case with respect to rates on the various other commodities included in the complaint.

At the hearing defendants stated that material reductions were being published, effective not later than April 15, 1922, in the rates on mining supplies from eastern transcontinental groups, which would establish generally a parity of rates thereon as between Globe division points, on the one hand, and Cananea, Ajo, Hayden, Clifton, and other branch-line and independent-line points in Arizona on the other hand. Among the principal articles embraced in this readjustment were cast-iron pipe, iron and steel articles of various kinds, mixing machinery, grinding balls, bolts, nuts, washers, spikes, boiler flues, boiler ends, boiler heads and cables. On forest products from California and Oregon to Arizona, and on petroleum oil from California, one-half of the general increase made on August 26, 1920, was to be removed and a similar parity established as between the points named. The rates on fuel oil from the midcontinent field were also to be reduced. The reductions on mining supplies and on coal and coke are experimental and of a temporary character. The entire increase of August 26, 1920, on coal and coke was removed on March 25, 1922. A reduction of 10 per cent has also been made in the rates on agricultural products.

Defendants, without admitting that the rates assailed are unreasonable or unduly prejudicial, stated

that, if we should find that [155] other rates must be reduced, the maximum reduction that should be required would be to establish joint through class and commodity rates to Globe division points from points east and west, based on the rates to Bowie and a reduction of one-third from the present local rates from Bowie. Complainant contends that such a readjustment would be inadequate and fail to remove the underlying causes of the complaint; that nothing has been shown in this proceeding to justify the charging of 66 2/3 per cent of the local rates to Globe division points and applying the junction-point rates, or rates only slightly higher, to numerous other points similarly situated.

The record in this proceeding shows that transportation conditions are without doubt somewhat more difficult over the Globe division than over the Phoenix division, but it can not be said that that difference is so pronounced as to warrant in itself a continuance of the existing inequalities as between the rates to points on those lines. Except as to Phoenix, defendants have failed to establish any such dissimilarity of conditions or other convincing reasons as to justify the present rate relation. Even as to Phoenix it should be remembered that the Southern Pacific does not in all instances have to meet the rates of the Santa Fe, but, on the contrary, the Santa Fe has to meet the rates of the Southern Pacific from many points of origin, because the latter is the direct and rate-making line.

The situation here presented is in all substantial respects similar to that considered by us in the recent case of State of Idaho ex rel. v. Director Gen-

eral, 66 I. C. C., 330. We there found that the maintenance of blanket commodity rates from and to Nampa, Idaho, main-line junction point on the Oregon Short line, and to Emmett and Boise, Idaho, on the Emmett and Boise branches, respectively, of the same carrier, lower than the rates contemporaneously maintained on like traffic from and to points on the Murphy and Wilder branches, was unduly prejudicial to the latter and unduly preferential of the former to the extent of the difference in such rates. A similar finding was made as to rates that were graded to points on those branches to the extent that the branch-line differentials on the Murphy and Wilder branches exceeded those maintained from and to points on the Emmett and Boise branches for like distances from the main-line junction.

The Southern Pacific owns practically all of the stock of the Arizona Eastern and, although the latter is separately operated, for rate-making purposes it may be considered as a branch line of the Southern Pacific. Smith v. I. C. R. R. Co., 68 I. C. C., 427; Arizona Corporation Commission v. A. E. R. R. Co., supra.

Defendants urge that no competitive relation has been made to appear as between the points considered herein. The record estab- [156] lishes a very definite competition existing as between certain of the points. In this connection attention may be directed to the decision in Intermediate Rate Asso. v. Director General, 61 I. C. C., 226, wherein the same contention was made. In that case we said:

> However, thriving communities, all in the same general section of the country, striving for population, industry, and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related.

The fact that rates to certain points are maintained under contract between the carriers and shippers does not affect our authority to require the carriers to desist from violations of the interstate commerce act. Ohio Rates, Fares, and Charges, 64 I. C. C., 493, Cape Girardeau Commercial Club v. I. C. R. R. Co., 51 I. C. C., 105. As in State of Idaho ex rel. v. Director General, supra, the record in the instant case does not support a finding of unreasonableness.

We find that the maintenance of class and commodity rates on interstate traffic from points in California, Oregon, and Washington and from eastern transcontinental groups to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, except competitive points located on lines of different carriers, and to Cananea, Mexico, in so far as the transportation takes place within the United States, not higher than the rates to the junction points with the main line of the Southern Pacific, and the refusal to maintain rates on a similar basis to Amster, Solomon, Safford, Thatcher, Pima, Fort Thomas, Globe, and Miami, Ariz., on the Globe division of the Arizona Eastern, is unduly prejudicial to the latter

points and unduly preferential of the former points to the extent that the rates to the Globe division points exceed the rates to the junction point.

We further find that the maintenance of class and commodity rates on interstate traffic, the rates on which are on a graded or mileage basis, from the points of origin described in the last paragraph to the said points on the Globe division higher for like distances than are contemporaneously maintained to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, and to Cananea, Mexico, in so far as the transportation takes place within the United States, is unduly prejudicial to the former points and unduly preferential of the latter points to the extent that the rates to the Globe division points exceed those contemporaneously maintained on like traffic to the other destination points described for like distances from the main-line junction. [157]

In the case of rates constructed according to the latter method, joint through rates should be established to all the branch-line and independent-line points involved based on the rates to the main-line junction point and a uniform percentage of the local rates beyond.

The Tucson, Cornelia & Gila Bend and the Arizona Southern are not parties defendant, and no order can, therefore, be issued against them, but it appears that the Southern Pacific controls the rates to Ajo and Sasco and that it can remove the undue prejudice and preference as to those points.

An appropriate order will be entered. [158]

ORDER.

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 27th day of June, A. D. 1923.

No. 13139.

Graham & Gila Counties Traffic Association

v.

Arizona Eastern Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Baltimore & Ohio Railroad Company; Boston & Albany Railroad Company and The New York Central Railroad Company, Lessee; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Gulf Railway Company; The Colorado & Southern Railway Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Fort Worth & Denver City Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Louisville & Nashville Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; The New York Central Railroad Company; The Pennsylvania Railroad Company; Southern Pacific Company; Texas & New Orleans Railroad Company; and The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, Receivers.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and said division having found in said report that the maintenance of class and commodity rates on interstate traffic from points in California, Oregon, and Washington and from eastern transcontinental groups to Ajo, Mesa, Florence, Sasco, and Nogales, Ariz., and other points on the Arizona Eastern and on branch lines of the Southern Pacific in Arizona, except competitive points located on lines of different carriers, and to Cananea, Mexico, in so far as the transportation takes place within the United States, not higher than the rates to the junction points with the main line of the Southern Pacific, and the refusal to maintain rates on a similar basis to Amster, Solomon, Thatcher, Pima, Fort Thomas, Globe, and Miami, Ariz., on the Globe division of the Arizona Eastern, is unduly prejudicial to the latter points and [159] unduly preferential of the former points to the extent that the rates to the Globe division points exceed the rates to the junction point; and that the maintenance of class and commodity rates on interstate traffic, the rates on which are on a graded basis, from the said origin points and groups to the said points on the Globe division higher for like distances than are contemporaneously maintained to Ajo, Mesa, Florence, Sasco, and Nogales, and other points on the Arizona Eastern

and on branch lines of the Southern Pacific in Arizona, and to Cananea, in so far as the transportation takes place within the United States, is unduly prejudicial to the former points and unduly preferential of the latter points to the extent that the rates to the Globe division points exceed those contemporaneously maintained on like traffic to the other destination points described for like distances from the main-line junction:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before October 11, 1923, and thereafter to abstain, from practicing such undue prejudice and preference.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before October 11, 1923, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply rates which will prevent and avoid the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission, division 2.

[Seal] GEORGE B. McGINTY,
Secretary [160]

Thereupon defendants offered further testimony as follows:

TESTIMONY OF J. L. FIELDING:

Direct Examination:

(The qualifications of Witness Fielding were admitted by counsel for Plaintiff.)

"I am Assistant General Freight Agent of the Southern Pacific Company, with headquarters at San Francisco, and prior experience in Arizona and at El Paso, Texas. I am familiar with the rates from California to Bowie, Arizona, and have in my possession tariffs which show past and present rates on sugar, in carloads, from California points involved in this case to Bowie. I have prepared three statements relating to those rates, which have been checked by me against the tariffs, and are true and correct to the best of my knowledge and belief. The tariffs to which reference is made were lawfully on file with the Interstate Commerce Commission during the period shown."

Thereupon, there were offered in evidence, through said Witness Fielding, the statements referred to by the witness; which were marked, identified and received as Defendants' Exhibits "E", "F" and "G", and were and are in words and figures as follows: [162]

STATEMENT SHOWING COMPLETE CHRONOLOGICAL HISTORY OF CARLOAD RATES ON SUGAR FROM NORTHERN CALIFORNIA SHIPPING POINTS, VIZ: SAN FRANCISCO, CROCKETT AND SPRECKELS, CALIF., TO BOWIE, ARIZONA, DURING THE PERIOD APRIL 15th, 1914 TO AND INCLUDING JUNE 11, 1928.

UNITED STATES DISTRICT C[illegible]
(ARIZONA)
Case No. L-763
Exhibit No. E
Sheet No. 1

LINE	EFFECTIVE DATE OF CHANGE IN RATES	Rate in cents per 100 lbs.	Minimum Weight (Lbs).	Rate in cents per 100 lbs.	Minimum Weight (lbs).	TARIFF REFERENCE: ISSUED BY	TARIFF NUMBER	I.C.C. NUMBER	REMARKS
1.	April 15, 1914	70	36000	-	-	Sou. Pac. Co.	612-B	3632	
2.	November 15, 1914			55	60000	" " "	"	"	Voluntary Reduction.
3.	April 27, 1915	60	36000	-		" " "	"	"	Voluntary reduction in rate
4.	May 25, 1915	60	36000	55	60000	" " "	"	"	No change involved. Rates found reasonable in I.C.C. Docket 6806 (34 ICC 158) decided May 25, 1915).
5.	June 25, 1918	75	36000	69	60000	" " "	"	"	25% Increase Director General's Order No. 28.
6.	November 25, 1919	82	36000	77	60000	" " "	"	"	22¢ flat increase, F.R.A. ~~[illegible] Superseding General Order 28~~ 8016.
7.	February 29, 1920	-	-	77	60000	" " "	612-C	4077	82¢ rate, minimum 36000 lbs., cancelled, FRA 15797.
8.	August 26, 1920	-	-	96½	60000	" " "	"	"	25% increase: "Ex Parte 74" (58 ICC 220).
9.	July 27, 1921	-	-	96	60000	" " "	612-D	4172	Voluntary reduction.
10.	July 1, 1922	-	-	86½	60000	" " "	"	"	10% voluntary reduction: "Reduced Rates 1922"
11.	January 11, 1924	-	-	84	60000	" " "	612-F	4442	Voluntary reduction.
12.	October 27, 1925	-	-	75	60000	" " "	612-G	4499	Rate prescribed by I.C.C. in Docket 14140 (101 ICC 667).
13.	June 11, 1928	-	-	84	60000	F. W. Gomph, Agent	26-N	885	Rate prescribed by ICC in Docket 15742 (140 ICC 171).

Solomon ... sham

STATEMENT SHOWING RATES ASSESSED ON CARLOADS OF SUGAR FROM NORTHERN CALIFORNIA POINTS VIZ: SAN FRANCISCO AND SPRECKELS, CALIFORNIA TO BOWIE, ARIZONA AND EARNINGS THEREUNDER; RATES WHICH THE INTERSTATE COMMERCE COMMISSION DECLARE REASONABLE FOR APPLICATION ON SAID SHIPMENTS FOR REPARATION PURPOSES AND EARNINGS THEREUNDER, COMPARED WITH RATES PRESCRIBED AND/OR APPROVED AS REASONABLE ON SUGAR, BY THE INTERSTATE COMMERCE COMMISSION IN DECISIONS CITED, AND EARNINGS THEREUNDER.

UNITED STATES DISTRICT COURT (ARIZONA)
CASE NO. L-763
EXHIBIT NO. F
SHEET NO. 1

LINE	FROM		TO		MILES	ROUTE	RATES ASSESSED: Rates in cents per 100 pounds	RATES ASSESSED: Revenue Per Ton Mile (Mills)	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARES REASONABLE FOR REPARATION PURPOSES: Rate in cents per 100 lbs.	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARES REASONABLE FOR REPARATION PURPOSES: Revenue Per Ton Mile (Mills)
					Rates during period August 26, 1920 to August 19, 1921					
1.	Crockett,	Calif.	Bowie,	Ariz.	1002 a	A	96½	19.2	93	18.5
2.	San Francisco,	"	"	"	1021 a	A	96½	18.9	93	18.2
3.	Spreckels,	"	"	"	970 a	C	96½	19.9	93	19.1
4.	Crockett,	Calif.	Bowie,	Ariz.	1068 b	C	96½	18.1	93	17.4
5.	San Francisco,	"	"	"	1083 b	C	96½	17.8	93	17.1
6.	Spreckels,	"	"	"	970 b	C	96½	19.9	93	19.1
					Rates during period August 20, 1921 to June 30, 1922.					
7.	Crockett,	Calif.	Bowie,	Ariz.	1002 a	A	96	19.1	93	18.5
8.	San Francisco,	"	"	"	1021 a	A	96	18.8	93	18.2
9.	Spreckels,	"	"	"	970 a	C	96	19.8	93	19.1
10.	Crockett,	Calif.	Bowie,	Ariz.	1068 b	C	96	18.0	93	17.4
11.	San Francisco,	"	"	"	1083 b	C	96	17.7	93	17.1
12.	Spreckels,	"	"	"	970 b	C	96	19.8	93	19.1
					Rates during period July 1, 1922 to January 10, 1924					
13.	Crockett,	Calif.	Bowie,	Ariz.	1002 a	A	86½	17.2	84	16.8
14.	San Francisco,	"	"	"	1021 a	A	86½	16.9	84	16.4
15.	Spreckels,	"	"	"	970 a	C	86½	17.8	84	17.3
16.	Crockett,	Calif.	Bowie,	Ariz.	1068 b	C	86½	16.2	84	15.7
17.	San Francisco,	"	"	"	1083 b	C	86½	16.0	84	15.5
18.	Spreckels,	"	"	"	970 b	C	86½	17.8	84	17.3

UNITED STATES DISTRICT COURT
(ARIZONA) CASE NO. L-763
EXHIBIT NO. F
SHEET NO. 2

- COMPARISONS -

LINE	FROM	TO	MILES	ROUTE	RATE IN CENTS PER 100 LBS.	REVENUE PER TON PER MILE (MILLS)	REMARKS
19.	Crockett, Calif.	Phoenix, Ariz.	768 a	B	96½	25.1	Rate prescribed in ICC 11532 (62 ICC 412) decided
20.	San Francisco, "	Phoenix, "	787 a	B	96½	24.5	June 22, 1921.
21.	Sprockels, "	" "	806 a	C	96½	23.9	do
22.	Crockett, Calif.	Phoenix, Ariz.	904 b	C	96½	21.3	do
23.	San Francisco, "	Phoenix, "	919 b	C	96½	21.0	do
24.	Sprockels, "	" "	806 b	C	96½	23.9	do
25.	Crockett, Calif.	Globo, Ariz.	1126 a	A	159 c	28.2	Rates in effect on January 18, 1922, and approved as
26.	San Francisco, "	" "	1145 a	A	159 c	27.7	reasonable in ICC 13139 (81 ICC 134), decided June 27,1923.
27.	Sprockels, "	" "	1094 a	C	159 c	29.0	do
28.	Crockett, Calif.	Globo, Ariz.	1192 b	C	159 c	26.6	do
29.	San Francisco, "	" "	1207 b	C	159 c	26.3	do
30.	Sprockels, "	" "	1094 b	C	159 c	29.0	do
31.	Crockett, Calif.	Safford, Ariz.	1042 a	A	129 c	24.8	do
32.	San Francisco, "	" "	1061 a	A	129 c	24.3	do
33.	Sprockels, "	" "	1010 a	C	129 c	25.5	do
34.	Crockett, Calif.	Safford, Ariz.	1108 b	C	129 c	23.3	do
35.	San Francisco, "	" "	1123 b	C	129 c	22.9	do
36.	Sprocklos, "	" "	1010 b	C	129 c	25.5	do
37	Crockett, Calif.	Douglas, Ariz.	1012 a	A	96½	19.0	Rates attacked as unreasonable in Docket 11442 (64 ICC
38	San Francisco, "	" "	1031 a	A	96½	18.7	405) decided November 3, 1921 and approved as reasonable
39	Sprockels, "	" "	980 a		96½	19.7	in said proceeding.
40	Crockett, Calif.	Douglas, Ariz.	1078 b	C	96½	17.9	do
41	San Francisco, "	" "	1093 b	C	96½	17.6	do
42	Sprockels, "	" "	980 b	C	96½	19.7	do

UNITED STATES DISTRICT COURT
(L.A.I.C.C.A.)
CASE NO. L-763
EXHIBIT NO. F
SHEET NO. 3

ROUTES:

A - Southern Pacific Company - Mojave, Calif. - A.T.&S.F.Ry. Phoenix, Ariz. - S.P.Co. via Maricopa, Ariz.

B - Southern Pacific Company - Mojave, Calif. - A.T.&S.F.Ry. Phoenix, Ariz.

C - Southern Pacific Company direct.

NOTES: a - Shortest direct rail mileages.

b - Mileage via usual and customary route of movement

c - Bowie, Ariz. combination, 96 cents to Bowie, plus 65 cents to Globe and 33 cents to Safford, Ariz.

Exhibit No. 17

STATEMENT SHOWING RATES ASSESSED ON CARLOADS OF SUGAR FROM SOUTHERN CALIFORNIA POINTS VIZ: BETTERAVIA, OXNARD AND DYER, CALIF. TO BOWIE, ARIZ., AND EARNINGS THEREUNDER; RATES WHICH THE INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES ON SAID SHIPMENTS, AND EARNINGS THEREUNDER, COMPARED WITH RATES PRESCRIBED AND/OR APPROVED AS REASONABLE ON SUGAR BY THE INTERSTATE COMMERCE COMMISSION IN DECISIONS CITED AND EARNINGS THEREUNDER.

UNITED STATES DISTRICT COURT
(ARIZONA)
Case No. L-763
Exhibit No. G
Sheet No.

LINE	FROM	TO	MILES	ROUTE	RATES ASSESSED: Rate in cents per 100 pounds	RATES ASSESSED: Revenue Per Ton Mile (Mills)	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Rate in cents per 100 pounds	RATES WHICH INTERSTATE COMMERCE COMMISSION DECLARED REASONABLE FOR REPARATION PURPOSES: Revenue Per Ton Mile (Mills)
	Rates during period August 26, 1920 to August 19, 1921							
1.	Betteravia, Calif.	Bowie, Ariz.	816	C	96½	23.7	83	20.3
2.	Oxnard, "	" "	680	A	96½	28.3	83	24.4
3.	Dyer, "	" "	652	A	96½	29.6	83	25.7
	Rates during period August 20, 1921 to June 30, 1922							
4.	Betteravia, Calif.	Bowie, Ariz.	816	C	96	23.5	83	20.3
5.	Oxnard, "	" "	680	A	96	28.2	83	24.4
6.	Dyer, "	" "	652	A	96	29.4	83	25.7
	Rate during period July 1, 1922 to January 10, 1924.							
7.	Betteravi , Calif.	Bowie, Ariz.	816	C	86½	21.2	75	18.4
8.	Oxnard, "	" "	680	A	86½	25.4	75	22.1
9.	Dyer, "	" "	652	A	86½	26.5	75	23.0

- C O M P A R I S O N S -

LINES:	FROM	TO	MILES	ROUTE	Rate in cents per 100 lbs.	Revenue Per Ton Mile (Mills)	REMARKS
10	Betteravia, Calif.	Phoenix, Ariz.	652	D	96½	29.6	Rates prescribed in ICC 11532 (62 ICC 412)
11	Oxnard, "	" "	516	B	96½	37.4	decided June 22, 1921.
12	Dyer, "	" "	478	B	96½	40.4	do
13	Betteravia, Calif.	Globe, Ariz.	940	C	159 a	33.8	Rate in effect on Jan. 1o, 1922, approved as
14	Oxnard, "	" "	804	A	159 a	39.6	reasonable in ICC 13139 (81 ICC 134) decided
15	Dyer, "	" "	776	A	159 a	41.0	June 27, 1923.
16	Betteravia, Calif.	Safford, Ariz.	856	C	129 a	30.1	do
17	Oxnard, "	" "	720	A	129 a	35.8	do
18	Dyer, "	" "	691	A	129 a	37.3	do
19	Betteravia, Calif.	Douglas, Ariz.	826	C	96½	23.4	Rate complained of as unreasonalbe in ICC Docket
20	Oxnard, "	" "	690	A	96½	28.0	1142 (64 ICC 405) and approved as reasonable by
21	Dyer, "	" "	662	A	96½	29.2	Interstate Commerce Commission decided Nov. 3,1921.

ROUTES: A - Southern Pacific Company. (a) - Bowie combinntion 96¢ to Bowie plus 63¢ to Globe and 33¢ to Safford, Ariz.
B - Southern Pacific Company via Maricopa, Arizona. C - Route D [illegible] D - SPV RR - Guadalupe, Cal. - S.P.Co.via Maricopa.

(Testimony of J. L. Fielding.)

Thereupon the defendants offered in evidence, by reference, but without incorporating the same physically in the record, the reports of the Interstate Commerce Commission in Ex Parte 74, Increased Rates 1920, 58 I. C. C. 220, and Reduced Rates 1922, 68 I. C. C. 676; to which method of introduction plaintiff, through its counsel, agreed.

Thereupon it was stipulated and agreed, by and between counsel for plaintiff and defendants, that the Director-General of Railroads, as Agent of the President of the United States, acting pursuant to the Federal Control Act, assumed possession, control and operation of the railroad properties of defendants on or about December 29th, 1917, and in said capacity continued in such control, possession and operation until and including February 29th, 1920; that on March 1st, 1920, possession, control and operation of said railroad properties were resumed by defendants as the corporate owners.

Thereupon there was offered in evidence by defendants, through said Witness Fielding, and received as Exhibit "H", a true and correct copy of Freight Rate Authority No. 8016 of the Director General of Railroads. Said Exhibit "H" was and is in words and figures as follows: [169]

(Testimony of J. L. Fielding.)

EXHIBIT "H"

UNITED STATES RAILROAD ADMINISTRATION
Director General of Railroads
Division of Traffic—Western Territory
Transportation Building
608 South Dearborn Street
Room 1909
Chicago, Illinois
E. B. Boyd, Secretary
J. G. Morrison, Ass't. Secretary
Western Freight Traffic Committee

A. C. Johnson, Chairman, F. B. Houghton, S. H. Johnson, H. C. Barlow, Seth Mann, G. S. Maxwell.

Dockets Nos. 1990 & 2479 (F.R.A. 8016)

Chicago, Ill., May 27, 1919.

To the Chairmen, District Committees, and Freight Traffic Officers of Railroads under Federal Control, Western Territory.

RATE ADVICE NO. 3030

(Cancels Rate Advices Nos. 31 and 896)

CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERRORS.

Freight Rate Authority No. 8016 dated May 16, 1919, has been issued by the Director of Traffic, reading as follows:

This will authorize publication of tariff changes to correct clerical or typographical errors under the following conditions:

(Testimony of J. L. Fielding.)

1. If in amending tariffs to comply with General Order No. 28, Circulars of the Division of Traffic, or under Freight Rate Authorities, issued by the Director, Division of Traffic, there was an error which resulted in establishing rates, charges, regulations or practices different from those prescribed in said Order, Circulars or Authorities, correction may be made to bring about compliance with said Order, Circulars or Authorities.

2. If after rates, charges, regulations or practices have once been correctly published under General Order No. 28, Circulars of the Division of Traffic, or a Freight Rate Authority, and in a subsequent reissue of supplements or tariffs there was an error which resulted in establishing rates, charges, regulations or practices different from those authorized in such Order, Circulars or Authorities, correction may be made to restore them to the basis as authorized.

Tariffs issued under this Freight Rate Authority shall show reference both to it and to the Order, Circular or Freight Rate Authority which authorized the rates, charges, regulations or practices as corrected.

Tariff changes made under this Freight Rate Authority may be made effective on one day's notice if they effect reductions; if they bring about advances they may also be made on one day's notice, provided they can be made effective on the same date as the item to be corrected, otherwise

(Testimony of J. L. Fielding.)

they must be made effective on thirty day's notice.

This cancels Freight Rate Authorities Nos. 154 and 2769.

Please be governed accordingly.

A. C. JOHNSON,
Chairman. [170]

A-HJL

Thereupon there was offered in evidence by defendants through Witness Fielding, and received as Exhibit "I", a true and correct copy of an original letter from W. G. Barnwell, Chairman of the San Francisco District Freight Traffic Committee of the United States Railroad Administration, dated at San Francisco, California, August 15, 1919, and relating to the application of the provisions of General Order No. 28 of the Director-General of Railroads to rates on sugar to points in Arizona, including Bowie. Said Exhibit "I" was and is in words and figures as follows [171]

(Testimony of J. L. Fielding.)

EXHIBIT "I"

UNITED STATES RAILROAD ADMINISTRATION

J. T. S. Aug. 16, 1919

Director General of Railroads
Division of Traffic—Western Territory
64 Pine Street
Room 404
San Francisco, Cal.

San Francisco District Freight Traffic Committee
W. G. Barnwell, Chairman, G. W. Luce, H. K. Faye, S. H. Love, F. P. Gregson, John S. Willis.
F. W. Gomph, Secretary

August 15, 1919.
File No. RA 2068-A-4

SUBJECT: Increase in the Rate on Sugar, carloads, from California Points to Albuquerque, New Mexico, and El Paso, Texas.

Mr. T. A. Graham, A.F.T.M., Southern Pacific R.R., San Francisco, Cal.

Mr. W. G. Barnwell, A.F.T.M., A. T. & S. F. R. R., San Francisco, Cal.

Mr. H. K. Faye, G.F.A., Western Pacific R. R., San Francisco, Cal.

Mr. T. M. Sloan, F. G. A., L. A. & S. L. R. R., Los Angeles, Cal.

Gentlemen:

Referring to Mr. Graham's letter of July 18th, file 1—N—6053-B-Cal-NM, relative to the proper increase to be made in the rates on Sugar, carloads,

(Testimony of J. L. Fielding.)

from California points to points in Arizona, New Mexico, Nevada and Utah, by authority of that portion of General Order 28 which reads: "from points in California and Oregon to points taking Missouri River rates and points related thereto, under the Commission's Fourth Section order, increased 22 cents per 100 pounds". In order to determine just what was meant by the words "and points related thereto under the Commission's Fourth Section order" the Committee wired Director Chambers, who replied on August 12th as follows:

"In Item 6 of Sugar paragraph in General Order 28 our reference to Commission's Fourth Section orders had in mind the fact that in the Commission's Fourth Section orders covering Eastbound Sugar to Missouri River the Commission prescribed that via certain routes the Missouri River or Colorado rates should be held as maximum while via other routes they prescribed that the rates might be ten cents less than to the Missouri River and it was to those points which were held down by the Missouri River rate under these Fourth Section orders that item 6 prescribes a 22 cent increase. Note item 6 also provides for 22 cent increase to points taking Missouri River rates so if the rates to the destinations in question were prior to June 25th either the same as the Missouri River rates or held down by the Commission's order in the Missouri River case like the 10 cent higher basis then the advance should be 22 cents, otherwise 25%." [172]

(Testimony of J. L. Fielding.)

#2—Joint letter to Messrs. Graham, Barnwell, Faye and Sloan—RA 2068-A-4.

It would appear, therefore, that where rates to points west of the western boundary line of Group J territory published in tariffs of individual line or Bureau issue are the same as the rate to Colorado or Missouri River by reason of the application of those rates as maximum at intermediate points, such rates should be increased 22 cents per 100 lbs.

Further, that *were* rates to branch line points or to points on connecting lines are made by using said maximum rates to the junction, plus locals or arbitraries beyond the junction, those rates should be increased on the basis of 22 cents per 100 lbs. to the junction point and the local or arbitraries beyond the junction point, increased 25%, should be added thereto.

Attention is directed to the rates published in Agent Gomph's Tariff No. 23 Series to points on the Oregon Short Line north of Ogden, Utah, where rates may have been constructed on an arbitrary basis without regard to the rate to Ogden but with regard to the rates from Missouri River to O.S.L. points. A check should be made of those rates and if it is found that any of them are constructed on such an arbitrary basis they should be increased 25%. Interested carriers are requested to look into this feature of that tariff and arrange to give Agent Gomph specific instructions as to the changes that should be made in those rates.

(Testimony of J. L. Fielding.)

Where rates have been published on basis of a 25% increase but which should have been increased 22 cents per 100 lbs., Freight Rate Authority No. 8016 of May 16th issued for the purpose of permitting corrections in clerical errors is sufficient authority to proceed. No additional Freight Rate Authority is necessary to cover the reissuance of rates which have not already been transposed to the General Order 28 basis.

Yours truly,

W. G. BARNWELL.

CC to Messrs.:

W. C. Barnes
E. J. Fenchurch
J. A. Reeves
Fred Wild, Jr.
F. W. Gomph [173]

Thereupon Witness Fielding testified further as follows:

"In my experience as a rate expert the judgment of the Commission, when it has prescribed a rate between two points, is always considered as a fair measure of the proper rate for a similar transportation service between two other related points in the same territory. We generally agree with the Commission as to rates for the future, and accept its affirmative action as a guide to our action in fixing rates between points related to those between which the Commission has prescribed the rates.

(Testimony of J. L. Fielding.)

There is no guide or index of rate-making upon which we would prefer to rely. If there had been, during 1921 to 1923, a rate prescribed by the Commission from the same points of origin to a destination in Arizona related to Bowie, we would have taken that rate as some measure of a reasonable rate to Bowie at that time. During the period of movement of the plaintiff's shipments there were in effect to Phoenix rates of 96 cents, or less, in conformity with the order in the First Phoenix Case, in which a maximum rate of 96½ cents from California points to Phoenix was prescribed. In view of that fact, I can not justify the retroactive application of rates of 75 cents and 84 cents from the same points of origin to Bowie, upon the plaintiff's shipments. The distance from California points to Bowie at the time these shipments moved was about 164 miles greater than to Phoenix; and a reasonable rate to Bowie should be greater than the corresponding rate to Phoenix. Shipments from northern California points would move over the Southern Pacific direct via Los Angeles to Maricopa, and thence over the Arizona Eastern, a solely controlled subsidiary of the Southern Pacific, to Phoenix, during 1921, 1922, and 1923; and shipments to Bowie would move direct over the Southern Pacific main line, following the same route as far as Maricopa. This situation was true at all times during which the plaintiff's shipments here involved were moving."

(Testimony of J. L. Fielding.)

Cross Examination: [174]

"During the period of movement of the shipments here involved Phoenix was not intermediate to Bowie, because Phoenix was on a branch line reached via Maricopa, whereas Bowie was on the main line. The movement to Phoenix involved a haul over the Arizona Eastern, a Southern Pacific subsidiary, and was thus referred to by the carriers as a two-line haul. Arbitraries in the rates were added by the carriers, and prescribed by the Commission, for this two-line haul. The conditions at Bowie differed from those at Phoenix, because Bowie was on the Southern Pacific main line."

"We accept the Interstate Commerce Commission's rulings as to groupings and related points, generally, provided that the Commission's findings in a particular case have been settled. A great many commodities have had rates blanketed all the way across the State of Arizona, regardless of mileage, and a great many of those rates today bear the Commission's approval. Rates on sugar were blanketed all the way across to Trinidad, Colorado, and mileage did not enter into consideration in the fixing of the rates; this was because of the desire of the California carriers to handle the California production into the competitive markets east of Colorado, for which purpose they made comparatively low rates, applying the same rates to the relatively light movement to Arizona points. The result was that the rates were the same to intermediate points all along the line, including intermediate points in New Mex-

(Testimony of J. L. Fielding.)

ico. Sugar going to Safford and Globe, Arizona, had to move through Bowie as a junction point, and via the Arizona Eastern, and so moved during 1921 to 1923, the period here involved.

While lower rates were in effect to Trinidad, Colorado, and points east, prior to 1924, than to Bowie, and the mileage, volume of movement, and all other conditions, to Trinidad were therefore ignored in making the rates, this was with the Commission's permission, and by its authority. This authority to depart from the Fourth Section was withdrawn in 1924, subsequent to the period of [175] movement involved here."

The question was then asked the witness on cross examination by plaintiff's counsel whether, assuming that the Commission had not rendered its decision in the First Phoenix Case, he would say that the rates to Bowie prescribed for reparation purposes were reasonable; to which question defendants objected upon the ground that the same was incompetent, in that it assumed the existence of facts not in evidence, and known to be contrary to the undisputed evidence. Said objection was overruled by the Court, to which ruling defendants then and there duly excepted.

Witness Fielding thereupon testified further as follows:

"I cannot answer that question, because it would be silly for me to say that those rates were reasonable for the past when they had not been approved for the past.

(Testimony of J. L. Fielding.)

As far as reparation is concerned, the rates in effect at the time the shipments moved were reasonable. Rates are always assumed to be reasonable until found otherwise.

It is not a fact that I have advanced the theory that the correct rate to Arizona would be 120 per cent of the Memphis-Southwestern rate for the same distance. All that I have done or that anyone in our company has done is to attempt to persuade the Commission, upon the basis of operating and transportation conditions, that the rates in this territory should be 30 per cent to 40 per cent higher than in the Southwest. I have never subscribed to any fixed rate-relationship in this territory as compared to the Southwest."

The witness was then questioned by plaintiff's counsel as to the relationship between the class rates, as between this territory and Southwestern territory; to which question defendants then and there objected, upon the ground that the same was immaterial and incompetent, and improper cross examination. Said objection was overruled by the Court, to which ruling defendants then and there [176] duly excepted.

Witness Fielding thereupon testified further as follows:

"There is no relationship as to the class rates; although the class rates fixed by the Commission between Arizona and California range in some cases as much as 40 per cent higher than in Southwestern territory, and are generally higher. My opinion as

(Testimony of J. L. Fielding.)

to what was a reasonable rate to Bowie was based solely upon the rate that was in effect to Phoenix."

Re-direct Examination:

"My previous answer as to the reasonableness of the rates to Bowie was based largely upon the prescribed rate to Phoenix, fixed in the First Phoenix Case. If the 96½-cent rate thus prescribed to Phoenix was reasonable, certainly any lower rate to Bowie, a point 167 miles farther, would be condemned by anybody as being unduly low.

While Phoenix in 1921 was on a branch line, or a line of a Southern Pacific subsidiary, the rates on sugar to Phoenix, ever since 1920, have uniformly been on the main-line basis, the same as to Maricopa; and no differential has been made since that time because of the branch-line haul.

While the rates to Bowie were the same as to points farther east, including some points in New Mexico, those rates were held down by the existence of extremely low competitive rates to the consuming territory east of New Mexico. The reason for the existence of rates to Bowie, on the same level as to points farther east, was the desire of California carriers to carry sugar, at whatever rates they could get, in competition with eastern lines reaching the same destinations in the heavy consuming territory. This is shown in the Commission's decisions in the earlier sugar cases."

Re-cross Examination:

"There are no circumstances under which one

(Testimony of J. L. Fielding.)

would be justified [177] in charging a lower rate for the farther distance to Bowie than the corresponding rate to Phoenix. Where this was done prior to the First Phoenix Case (1921), it was because of the addition of the arbitrary for the two-line haul to Phoenix. I do not know of any specific situation today where we charge a lower rate to a more distant point on a main line than to a less distant point on a branch line, though such a situation may be possible. We do have branch-line arbitraries at the present time, and at one time charged arbitraries to Phoenix.

The rates shown for purposes of comparison on my Exhibit 'F' are the rates in effect prior to July 1, 1922; those rates, particularly to Phoenix, were found reasonable by the Commission. The rate to Phoenix was reduced 10 per cent in 1922, and after that date was 86½ cents. The same is true as to the rates to Douglas. This is not shown on my exhibit."

Re-direct Examination:

"The purpose of my Exhibit 'F', as stated in its title, is to compare the rates to Bowie with rates which the Commission found reasonable."

Thereupon defendants moved the Court to render and enter judgment upon the pleadings, and the evidence, in favor of the defendants and against the plaintiff, dismissing the complaint; which motion was denied by the Court, to which ruling denying their said motion defendants then and there duly excepted.

[Testimony of J. L. Fielding.]

The parties had theretofore requested the Court, by oral request duly made in open court, to make, enter and file special findings of fact and conclusions of law, prior to rendering and entering judgment. Thereupon the parties rested, and no further evidence was offered or received on that day.

Thereafter and on November 9, 1932, the cause was orally argued by counsel for the respective parties, and submitted to the Court for decision, subject to further hearing upon the question [178] of the fees to be allowed to plaintiff's attorneys and counsel in the event plaintiff should finally prevail. Thereafter, and on December 27, 1932, the Court announced that he was of opinion that after the final submission of the cause, plaintiff would be entitled to recover.

Thereafter and on January 17, 1933, and pursuant to stipulation and agreement of the parties, each of said parties introduced testimony respecting the amount of the attorneys' fees to be allowed by the Court to plaintiff's attorneys. To support its contentions as to said attorneys' fees, plaintiff offered the following testimony, to wit:

(It was agreed by and between plaintiff and defendants that, it appearing that Samuel White, Esquire, one of plaintiff's counsel, was unable to be present, he would, if present and sworn as a witness, testify substantially as appears in the following statement.)

STATEMENT OF SAMUEL WHITE:

"I have been a practicing attorney for fifty-one years, with experience before the courts of Arizona and Oregon and various federal courts, including the United States Supreme Court. In my practice I have had considerable experience in connection with cases based upon reparation orders of the Interstate Commerce Commission. In the instant case and other cases of the same kind now being discussed I have expended a great deal of time, effort and energy in preparation, including preparation of the complaints, research of the law, preparation of briefs and argument, and preparation for trial. In these cases I have collaborated with Mr. Snell. The handling and prosecution of these cases involves a great deal more effort and professional ability than would be required in an action upon a promissory note or the foreclosure of a mortgage.

After considering the amount involved in the case and the character of the services rendered, it is my opinion that a reasonable fee for the services rendered in connection with this case [179] before the District Court is 25 per cent of the total amount involved; that is to say, 25 per cent of the principal, plus interest, due to date."

TESTIMONY OF FRANK L. SNELL, JR.

Direct Examination.

"My name is Frank L. Snell, Jr. I am a practicing attorney, and a graduate of the Kansas Uni-

(Testimony of Frank L. Snell, Jr.)

versity Law School. (Mr. Snell's qualifications were then admitted by defendants). My practice has been before the Superior Courts of Arizona, and the courts of New Mexico and Missouri, and before various federal courts, including the Supreme Court of the United States. I have had experience in the preparation, handling and disposition of reparation cases such as the present case, which experience goes back over the past four years. Particular and special knowledge is essential in cases of this kind, which I consider to be in the nature of a special class of legal work. I have made a special study of these cases, and of the law involved. I have been associated with Judge White in the instant case. Among the services rendered in connection with this particular case were the following: preparation of the complaint; an attempt to reach an agreed statement of facts, which was, however, unsuccessful; and the actual preparation for trial, including consultation with Witness Reif, and the preparation of exhibits and other evidence. It was also necessary to anticipate the defendants' evidence, and therefore to prepare a rather full and comprehensive trial brief, all of which was done in collaboration with Judge White. The next was the trial of the case, following which there was oral argument, and the preparation of a brief which I submitted. There has also been the necessary preparation for this hearing on attorneys' fees, which will be followed, I presume, by preparation of findings of fact, conclusions of law and the judgment. In the instant case, the total

(Testimony of Frank L. Snell, Jr.)
amount involved, as computed by Judge White, being principal, plus interest to January 16, 1933, is $3,081.17. [180]

In my opinion a fee of 25 per cent of the total amount involved would be a reasonable fee. I base that opinion upon consideration of all the work necessary in this case and the companion reparation cases now being considered, and considering also the time expended, which amounted to 182 office hours and 30 court hours, not including Judge White's time. I have checked this figure, by computing our office time on the basis of $15.00 per hour and our time in court at $200.00 per day."

Cross Examination.

"I justify $15.00 per hour for office work on the basis of charges made to insurance companies and companies which are pretty careful about their fees and it has always been accepted. It is the regular charge of our office. The regular charge of our office for a day in court is $200.00. We are paid at the rate of $15.00 per hour for office work in other transactions not involving trial work. That is not an arbitrary charge, for some cases justify larger and some cases smaller charges. The preparation in this case was not as difficult as the original preparation in the Arizona Grocery Case, but one has to be very careful to be sure that the complaint agrees with the Commission's order. It is not a matter that can be treated with indifference. You do not have to pay any more attention to detail in a case of this kind than in the case of a mort-

(Testimony of Frank L. Snell, Jr.)
gage foreclosure. I acquired considerable knowledge of the Interstate Commerce Act in the Arizona Grocery Case, but I spent a great deal more time in that case than in the present case upon the preparation.

In cases of this character $200.00 for each court day would be the minimum fee. I do not know about any other firm's collections, though other firms do charge that for their work. In public liability cases, with considerable amounts involved, where we are successful, $200.00 per day is the minimum charge. The charge of $15.00 per hour for office work is based upon the study made in [181] our own office some years ago. I have made a study of the matter among the attorneys here in Phoenix, and found that various amounts were being charged, depending upon the men doing the work.

I do not believe there is any office, and ours is no exception, that works arbitrarily on an hourly basis. I have used that basis in checking the fee in this case and found that it approximated the 25 per-cent fee which I consider to be fair. In our insurance company practice the clients have accepted the basis above outlined, although in the trial of cases we are upon a per diem basis and the amount paid depends on the case. We have not accepted compensation from the insurance companies on the basis of $100.00 retainer, and $100.00 per day fee.

My figure of $15.00 per hour for office work approximates $100.00 per day, although the actual

(Testimony of Frank L. Snell, Jr.)

work in the office will not exceed five or six hours. On that basis, the average charge for each day's work figures about $75.00, or possibly less."

Thereupon plaintiff rested.

Thereupon defendants offered testimony with respect to plaintiff's said attorneys' fees as follows:

TESTIMONY OF BURTON MASON:

Direct Examination:

"My name is Burton Mason; and I am Commerce Attorney for the Southern Pacific Company. I have had 10½ years' experience in commerce work. I am admitted to practice in California and in the various federal courts, including the Supreme Court. I am also admitted to practice before the Interstate Commerce Commission, the Board of Tax Appeals, and the Treasury Department. I have had varied experience as a commerce attorney, in the handling of rate and traffic matters, and reparation cases. I have appeared on behalf of shippers, prior to my connection with the Southern Pacific, and during the last 6½ years as a representative of the carriers. In my experience I have become acquainted with the fees charged and allowed [182] for services of counsel in reparation cases, from the standpoint of the shippers as well as of the defendant carriers.

I have made a study of various cases in which reparation was involved, including cases in which

[Testimony of Burton Mason.]

I have myself participated. In the Meeker Case, which went to the Supreme Court, the total amount of the judgment was $109,000, and the fee allowed in the District Court, as corrected by the Supreme Court, was $7,500.00, or less than 7½ per cent of the total. In the Feintuch Case, 191 Fed. 482, which was also a reparation case, total judgment was $464.55, a comparatively small amount; and an attorney's fee of $150.00, or about one-third, was allowed. In the Ingalls Case, 51 Fed. (2d) 310 the recovery was $196.29. Although the prosecution of the case involved considerable labor, as will be seen from the fact there were two prior decisions, the fee allowed was $75.00. This fee took into consideration the amount involved. In the Lewis-Simas-Jones Case, finally decided by the Supreme Court, 283 U. S. 654, the amount finally paid on account of the reparation award was $1,700. This case was tried in the State Court of San Francisco, afterwards appealed to the District Court of Appeal of California, and then submitted to the Supreme Court of California on petition for hearing by that court after decision by the appellate court. It was also heard by the United States Supreme Court on writ of certiorari, where it was briefed and orally argued. The attorney's fee was fixed by arbitration, at $1,725.00 to cover all the work in all four courts. If one-third of this fee was allowed for the work in the trial court, it would approximate $575.00, or about 33 per cent. In the World Publishing Company Case, reported 16 Fed. (2d) 130, the total

[Testimony of Burton Mason.]

judgment was approximately $9,000.00, and the fee allowed was $2,500.00, covering the work in the trial court and in the Circuit Court of Appeals. In the Montrose Case, 25 Fed. (2d) 750, the total amount of the judgment, plus interest, was $80,000, and the attorney's fee allowed was $7,500.00, or about 10 per cent. In the Baer [183] Bros. Case, 200 Fed. 614, the amount of reparation, not including interest, was $723.00, and the attorney's fee was $250.00, which was considerably less than 25 per cent of the total recovery including interest. In the Consolidated Cut Stone Case, 39 Fed. (2d) 661, the total of the judgment was $30,624.00. The total fee of plaintiff's attorney, covering proceedings in the District Court, the Circuit Court of Appeals, and on petition for certiorari to the Supreme Court, was $7,500.00. If that case were taken as an index in the present case, it would indicate a fee of not more than 15 per cent of the total recovery. In the Sloss-Sheffield Case, finally decided about 1928, 269 U. S. 217, the total judgment including interest was in excess of $300,000.00. The case was vigorously fought. The attorney's fee allowed was $15,000.00, or almost exactly 5 per cent. In the Mills Case, 226 Fed. 812, the amount of the recovery was in excess of $9,000.00. There was a trial before a jury and afterwards proceedings were had in the Circuit Court of Appeals and in the Supreme Court. An attorney's fee of $1,000.00 was allowed for the services in the trial court and the same amount for services in the Court of Appeals. The fee for the work in the trial court was thus

[Testimony of Burton Mason.]

about 11 per cent of the amount recovered. In the Minds Case, 237 Fed. 267, the total amount recovered was $49,711.00, and the fee allowed was $10,000, which covered all of the work in the trial court and upon appeal to the Circuit Court of Appeals and the Supreme Court of the United States. In the Standard Oil Case, recently decided, the amount of reparation, exclusive of interest, was $380,000.00, and the amount of the judgment, exclusive of attorneys' fees and costs, was $530,000.00. The case was settled by paying the principal amount, exclusive of interest, or $380,000.00, plus $20,000.00 to cover attorneys' fees, costs and other expenses, or a little more than 5 per cent. I participated actively in that case.

In my opinion a reasonable fee in this case would be 10 per [184] cent of the amount recovered. While collections may pay 20 per cent, those are small collections, whereas this case and the other similar cases now being considered are not small cases, the total amount involved being about $26,000.00. While this has taken several suits, they have all been consolidated and practically tried as one. All that was required was the preparation of a simple form of complaint in each case, the form being varied only as to names of plaintiffs and destinations, and amounts. The essential allegations are identical. While 10 per cent might be comparatively inadequate in one of the smaller cases, it would be more than enough in one of the other cases where the work has been the same but the amount of the recovery happens to be greater.

[Testimony of Burton Mason.]

In the Union Oil Company and Shell Oil Company Cases, in which I participated, plaintiffs obtained judgments after lengthy proceedings, including a trial and oral argument. The judgments, including interest on the reparation awards amounted to $173,000.00. The trial court in those cases, after hearing on the question of counsel fees, awarded a fee of 10 per cent of the total recovery. That money was never actually paid because the cases were settled by paying the principal sums of reparation, without interest, but with a fee of $15,000.00 to cover all services.

In this case and in the other cases of similar character here being considered, Mr. Snell has pointed to a total of 182 office hours and 30 court hours, and proposes that his total compensation for this work should be $3,762.00. The annual salary of a United States District Judge is $10,000, less whatever income tax may be assessed. In the Train Limit Cases, with which I am somewhat familiar, the Master has done far more than three times the amount of work claimed to have been done by Mr. Snell and has received a fee of $11,000.00. On the basis of the Master's compensation, Mr. Snell's fee in all of these cases should be about $1,500.00, or about 10 per cent. If we suppose that the Court sits 250 working days [185] a year, the Judge's compensation is equal to $40.00 per day; and yet plaintiff's counsel claims $100.00 for office work and $200.00 a day for court work. It is probable that all judges of the District Courts are underpaid,

particularly the judges who have to listen to reparation suits."

Defendants thereupon rested, and the testimony was closed.

Thereupon the Court stated that in his opinion a fee of about 20 per cent of the total amount involved would be a reasonable attorney's fee; and did then and there render and enter an order allowing to plaintiff's attorneys 20 per cent of the total amount recovered as the fee to be paid the plaintiff's attorneys and counsel, when and if judgment should be rendered for the plaintiff. To the Court's said order, finding and ruling defendants then and there in open court duly excepted. Thereupon the Court ordered special findings of fact and conclusions of law to be proposed, and withheld judgment until said findings and conclusions should be settled.

Thereafter, the plaintiff did file its written proposed special findings of fact and conclusions of law; and defendants filed written proposed amendments and additions to the findings of fact and conclusions proposed and requested by plaintiff; and defendants further filed written special findings of fact and conclusions of law proposed and requested by them.

Thereafter, and on the 12th day of May, 1933, the Court did in open court hear argument upon such proposed findings and conclusions, and the amendments and additions to plaintiff's requested findings of fact and conclusions of law, as proposed by

defendants; and defendants did then and there, by their counsel, duly request the Court by written instrument, and also orally in open court, to make the following findings of fact, to wit (Paragraphs are numbered according to the written Special Findings of Fact requested by defendants, and on file in this cause): [186]

6. Thereafter, pursuant to said report, and in accordance with Rule V of the Rules of Practice of said Commission, plaintiff prepared the aforesaid Rule V statement showing the shipments upon which reparation was claimed, a copy of which is attached to the complaint herein, as Exhibit "B", as heretofore set forth.

7. Thereafter, under date of April 14, 1930, said Commission made and entered its order directing and requiring said defendants to pay to the plaintiff, on or before May 31, 1930, as reparation and damages, the amounts set opposite their respective names in said order, with interest thereon at the rate of six (6) percent per annum from the respective dates of the payment of charges as shown in said Rule V statements. A copy of said reparation order is annexed as Exhibit "C" to the complaint on file herein, and is hereby referred to for further particulars.

9. Under date of May 25, 1915, in response to a complaint attacking as unreasonable the

rates on sugar in carloads from all points in California to all destinations in Arizona (including Bowie) said Commission, after full hearing and investigation, rendered its report and order in a proceeding known and entitled as Docket No. 6806, Ariz. Corp. Comm. v. A. T. & S. F. Ry. Co., et al., 34 I. C. C. 158. Reference is hereby made to said report of said Commission, as set forth in its official reports, for further particulars.

As more fully appears from said report, the complaint in said Docket No. 6806 was filed with the Commission on April 15, 1914. During the pendency of said proceeding the carriers named as defendants therein voluntarily reduced their rates on sugar from all points of origin in [187] California to substantially all destinations in Arizona, including Bowie. Such voluntary reductions included in particular the establishment of rates on sugar, in carloads, from all said points in California to all said destinations in Arizona, subject to a minimum weight of 60,000 pounds per car, which rates were in all cases less than the rates theretofore applying from and to the same points in connection with a carload minimum weight of 36,000 pounds. In and by its said report in said Docket No. 6806 said Commission duly found, among other things, that said rates on sugar to Bowie, as voluntarily reduced during the pendency of said proceeding, were and in future would be just and reasonable. No order respect-

defendants; and defendants did then and there, by their counsel, duly request the Court by written instrument, and also orally in open court, to make the following findings of fact, to wit (Paragraphs are numbered according to the written Special Findings of Fact requested by defendants, and on file in this cause): [186]

6. Thereafter, pursuant to said report, and in accordance with Rule V of the Rules of Practice of said Commission, plaintiff prepared the aforesaid Rule V statement showing the shipments upon which reparation was claimed, a copy of which is attached to the complaint herein, as Exhibit "B", as heretofore set forth.

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ing said rates to Bowie was made by said Commission in said proceeding.

The character and extent of said voluntary reductions, and in particular of the reductions in the rates to Bowie, is fully set forth in said report in said Docket No. 6806.

10. In compliance with the Commission's said findings in said Docket No. 6806, the carriers parties to the rates therein involved continued until and including December 29, 1917, the rates on sugar in carloads, from the several points in California to the destinations in Arizona involved in this cause, which were in effect on said May 25, 1915. Upon said December 29, 1917, possession, control and operation of the railroad properties of the defendants and generally of all other railroad common carriers throughout the United States were assumed by the Director-General of Railroads, as Agent of the President of the United States, and said Director-General continued in such possession, control and operation until and including February 29, 1920. Said rates heretofore last-mentioned were continued in [188] effect by said Director-General from and after said December 29, 1917, until, but not including, June 25, 1918. On June 25, 1918, said Director-General caused said rates to be increased as specified and provided in General Order No. 28, issued by said Director-General pursuant to authority conferred by the Federal Control Act, 40 Stat. L. 456. Upon November 25, 1919, said rates, as

modified by the changes made pursuant to said General Order No. 28, were further modified pursuant to and as provided by an order duly issued by said Director-General, styled "Freight Rate Authority No. 8016, dated May 16, 1919". Said order last mentioned, also issued pursuant to authority duly conferred by said Federal Control Act, brought about a general readjustment of rates on sugar throughout the western part of the United States. On February 29, 1920, said Director-General, by order duly made, further modified said rates heretofore mentioned by canceling the rates from said California points to Bowie, then and theretofore in effect, subject to a carload minimum weight of 36,000 pounds. The rates then and theretofore in effect from and to said points, subject to a carload minimum weight of 60,000 pounds, was continued without further modification until, but not including, August 26, 1920.

11. On March 1st, 1920, upon the termination of Federal control, the several defendants and other carriers resumed possession and control of their railroad properties. Said carriers, parties to the rates on sugar from said California points to Bowie, maintained from and after said last mentioned date until, but not including, August 26, 1920, said rate on sugar subject to a carload minimum weight of 60,000 pounds which was in effect from and to said points at the date of termination of Federal control. On [189] said date last mentioned said rate was increased to

96½ cents per hundred pounds, as authorized by the report and order of said Commission in the proceeding entitled Ex Parte 74, Increased Rates 1920, 58 I. C. C. 220, to which report reference is hereby made for further particulars. Said report and order authorized general percentage advances in interstate freight rates throughout the United States.

12. Said rate of 96½ cents, as made effective August 26, 1920, was voluntarily reduced by said defendants, effective July 27, 1921, to 96 cents; and was further voluntarily reduced by said defendants, effective July 1st, 1922, to 86½ cents. Said reduction last-mentioned was in conformity with the recommendations made by said Commission in its report in a proceeding entitled: Reduced Rates 1922, 68 I. C. C. 676, to which report reference is hereby made for further particulars. Said rate of 86½ cents last-mentioned was further voluntarily reduced by said defendants, on or about January 11, 1924, to 84 cents. Said rates of 96½ cents, 96 cents, and 86½ cents, which were successively in effect during the period August 26, 1920, to January 10, 1924, both inclusive, were the rates assessed upon plaintiff's shipments during the period of movement thereof, as shown upon said Rule V statement annexed to the complaint herein, and are the rates referred to "As Charged" upon said statement.

13. On or about the 22nd day of June, 1921, and after full hearing and investigation, said

Commission rendered its report and order in a proceeding entitled Docket No. 11532, Traffic Bureau, Phoenix Chamber of Commerce, et al. v. Director-General, et al., 62 I. C. C. 412 (to which report reference is hereby made for further particulars) wherein [190] and whereby said Commission found, among other things, that the reasonable rate thereafter to be applied to the transportation of sugar in carloads, minimum weight 60,000 pounds, from points of origin in California (including the points of origin of the plaintiff's shipments involved herein) to Phoenix, Arizona, should not exceed 96½ cents per hundred pounds. The usual and customary routes of movement from said points of origin in California to Phoenix, Arizona, were at all times prior to November 1, 1926, identical with the direct routes of movement of shipments from said points to Bowie, Arizona, as far as and including Maricopa, Arizona, a point 35 miles by rail from Phoenix; and the distances over said routes of movement from said points of origin in California to Phoenix were at all times during the period of movement of the plaintiff's shipments involved herein, 160 miles less than the corresponding distances from said points of origin to Bowie. Said order of said Commission in said proceeding last mentioned, Docket No. 11532, specified that said rate of 96½ cents should be observed as the reasonable maximum rate from California points to Phoenix until the further order of said Com-

mission; and no further order with respect to said rate was made by said Commission during the period of movement of the plaintiff's shipments, or until about February 25, 1925. During all of said period of movement, said rate of 96½ cents was, and continued to be, the duly established and conclusive measure of the just and reasonable rate on sugar from the points of origin in California involved herein to Phoenix, and related points in Arizona, including Bowie.

14. On November 3, 1921, and after full hearing, said [191] Commission rendered its report and order in a proceeding entitled Docket No. 11442, Traffic Bureau, Douglas Chamber of Commerce & Mines v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405 (to which report of said Commission reference is hereby made for further particulars), in response to a complaint alleging, among other things, that the rates on sugar, in carloads, from points in California, including all of the points of origin of the plaintiff's shipments, to Douglas, Arizona, were and in future would be unreasonable and otherwise in violation of the Interstate Commerce Act. In said report said Commission found that said rate, which at the date of said complaint was 96½ cents per hundred pounds, was and in future would be not unreasonable. No further findings or order with respect to said rate to Douglas were made by said Commission subsequent to the report in said Docket No.

11442, until March 12, 1928, the date of the findings and order in said Docket No. 16742, and associated cases, to which reference has heretofore been made. The direct and actual routes of movement of plaintiff's shipments from points of origin in California to Bowie, Arizona, during all of the period of the movement thereof, were identical with the direct routes over which shipments of sugar moved from said points of origin to Douglas, Arizona, as far as and including Tucson, Arizona, a point about 124 miles westerly from Douglas and about 115 miles westerly from Bowie; and the distances from said points of origin in California to Douglas, Arizona, were, during all of said times, less than 10 miles greater than the corresponding distances from said points of origin to Bowie. During all of the period of movement of the plaintiff's shipments, said rate of 96½ cents to Douglas, found reasonable by said Commission in its report [192] in said Docket No. 11442, was and continued to be the duly established and conclusive measure of a just and reasonable rate for the transportation of shipments of sugar from the points of origin of plaintiff's shipments to Douglas and related points in Arizona, including Bowie in particular.

15. On June 27, 1923, after full hearing, and in response to a complaint alleging among other things that the rates on sugar in carloads from points in California including the points

of origin of plaintiff's shipments, to destinations in Arizona on the Globe Division of the Arizona Eastern Railroad Company (now the Globe Branch of the Southern Pacific Company) were unreasonable and otherwise in violation of the Interstate Commerce Act, said Commission rendered its report and order in a proceeding entitled Docket No. 13139: Graham & Gila Counties Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134. In said report said Commission found and declared that said rates, as in effect on January 18, 1922, were and in future would be not unreasonable. Reference is hereby made to said report for further particulars. On said date, January 18, 1922, the rate on shipments of sugar in carloads from the points of origin of the plaintiff's shipments to Globe, Arizona, was $1.59 per hundred pounds; the corresponding rate on sugar from said points of origin to Safford, Ariz., was $1.29; both said points, Globe and Safford, being located upon said Globe Division heretofore referred to. The direct routes from the points of origin of the plaintiff's shipments to Globe and Safford, were, at all times involved in this cause, identical with the direct routes from said points of origin to Bowie, as far as and including Bowie itself; Bowie being the point of junction [193] of said Globe Division with the main line of the Southern Pacific extending from Tucson, Arizona, via Bowie, to El Paso, Texas. At all said times the distances

from said points of origin to Globe and Safford were, respectively, 124 miles, and 40 miles, greater than to Bowie. During all said times said rates of $1.59 to Globe and $1.29 to Safford were, and continued to be, duly established and conclusive measures of the transportation services to which they respectively applied, and of similar transportation services over the same lines to related destinations.

16. The rates and charges assessed and collected upon the plaintiff's said shipments, as set forth upon said Rule V statement annexed to the complaint, were, and each of them was, just and reasonable, and in full conformity with the Interstate Commerce Act, and were, and each of them was, lawfully applied, assessed and collected by the said defendants.

which requests were severally denied by the Court, and the Court refused to find such facts as so requested; and defendants, by their counsel, then and there duly excepted to each and all of said rulings of the Court in failing to find such facts as so requested by them.

Defendants further did then and there, by their counsel, request the Court by written instrument and also orally in open court, to make the following conclusions of law, to wit: (Paragraphs are numbered according to the written Special Conclusions of Law requested by defendants and on file in this cause):

1. The rates and charges assessed and collected upon plaintiff's said shipments of sugar,

as shown and set forth in said Rule V statement annexed as Exhibit "B" to the complaint herein, were published, applied and collected by [194] authority of the Interstate Commerce Commission, and had previously been declared by said Commission to be not unreasonable, after full formal investigation, and/or were less in amount than rates which had previously been declared by said Commission to be reasonable after such investigation, subject only to intervening modifications authorized and/or required by the United States, acting through the Director-General, as the Agent of the President, and/or the Interstate Commerce Commission.

2. Said order of said Interstate Commerce Commission, dated April 14, 1930, and purporting to direct and require said defendants to pay reparation to the plaintiff with respect to its said shipments shown on said Rule V statement, was and is in excess of the lawful jurisdiction of said Commission, and therefore was and is null and void and of no effect.

3. Plaintiff has failed to establish by the evidence any cause of action whatever against the defendants or either or any of them; and has failed to establish that any unreasonable or otherwise unlawful rate or charge was collected upon any of the said shipments, or that any reparation whatsoever is due or payable with respect to said shipments or any of them.

4. Plaintiff is not entitled to recover any

amount whatsoever as fees of its attorneys and counsel in said cause; defendants are entitled to judgment against the plaintiff, that the plaintiff take nothing by its action, and that the complaint herein be dismissed.

which requests were severally denied by the Court, and such conclusions were refused; and the defendants, by their counsel, then and there duly excepted to each and all of said rulings of the Court in failing to make such conclusions of law, and in denying such re- [195] quests.

Defendants by their counsel then and there duly excepted to the ruling of the Court in failing to render and enter judgment in favor of the defendants and against the plaintiff, predicated upon the findings of fact and conclusions of law proposed and requested by defendants.

Thereupon, the Court did then and there in open court make its findings of fact and conclusions of law, and pursuant to stipulation of the parties incorporated therein by reference Exhibit "B" attached to plaintiff's complaint, being the so-called Rule V Statement showing the shipments made to and received by plaintiff upon which reparation is claimed; which said findings and conclusions were afterwards reduced to writing and filed by the Court in the following words and form, to wit:

(Title of Court and Cause.)

No. L-763-Phoenix.

FINDINGS OF FACT, AND CONCLUSIONS OF LAW.

This cause came on regularly for trial, and was tried by the court, sitting without a jury, on the 12th day of October, 1932, a trial by jury having been duly waived by written stipulation of the parties. The parties offered both oral and documentary evidence in support of their respective pleadings herein; and pursuant to stipulation, the parties subsequently, on the 17th day of January, 1933, offered certain oral testimony with respect to the matter of the fees to be allowed plaintiff's attorneys and counsel; and the Court was duly requested to make, enter and file special findings of fact and conclusions of law prior to rendering judgment. The Court does hereby make and file the following as its special findings of fact and conclusions of law: [196]

FINDINGS OF FACT.

I.

That plaintiff is, and was at all times mentioned in plaintiff's complaint, a corporation, organized under the laws of the State of Arizona, and qualified to do business in said State.

II.

Defendants now are, and at all times herein mentioned have been, corporations duly organ-

ized and existing as such, and engaged in the operation of lines of railroad, pursuant to authority of law as common carriers for hire, and in the transportation of property, by means of their said lines of railroad, and in conjunction with connecting carriers in interstate commerce, from points in Arizona.

III.

Heretofore, and at various dates between the 4th day of April, 1921, and the 3d day of December, 1923, both inclusive, plaintiff shipped or caused to be shipped from San Francisco, Crockett, Spreckels, Oxnard, Dyer and Betteravia, California, to Bowie, Arizona, over the lines of said defendants, 31 carload shipments of sugar. There is annexed to the complaint on file herein, as Exhibit "B", a tabulated statement (hereinafter referred to as a "Rule V" statement) which correctly shows in detail among other things, the dates upon which said shipments were made, the dates upon which the transportation charges thereon were collected, the initials and numbers of the cars in which the same were transported, the routes over which said shipments moved, the several weights of said shipments, the rates thereon assessed and the charges thereon collected (said rates and charges being shown under the columns collectively headed "As Charged" upon said statement), the rates subsequently found [197] by the Interstate Commerce Commission to have been

reasonable, and the amounts which would have accrued as charges under said last-mentioned rates (said rates and amounts being shown under the columns collectively headed "Should BE" upon said statement), and the amount of reparation claimed by the plaintiff, and allowed by said Commission, with respect to each of said shipments. Reference is hereby made to said Rule V statement for further particulars, with the same effect as if physically incorporated herein.

IV.

On or about August 14, 1932, plaintiff filed a complaint with the Interstate Commerce Commission, in which it was alleged, among other things, that the rates maintained, assessed, and collected by defendants and other common carriers for the transportation of sugar, in carloads, from various specified points in California, including the points of origin of plaintiff's shipments hereinbefore mentioned, to Bowie, Arizona, were and in future would be unreasonable, in violation of Section 1 of the Interstate Commerce Act. Following the filing of said complaint said Commission caused the same to be assigned Docket No. 14140. Thereafter, and in regular course, the defendants named in said complaint filed their answers thereto with said Commission, in which said answers said defendants denied in particular

that said rates had been, or were, unreasonable, or otherwise in violation of the Interstate Commerce Act as alleged, or that plaintiff had been or would be damaged thereby.

V.

Thereafter, under date of March 12, 1928, said Commission made and entered its report and order in said Docket No. 14140 and associated cases (including a pro- [198] ceeding known as Docket No. 16742) decided concurrently therewith, which said report of the Commission is contained in its official reports: 140 I. C. C., at pp. 171 and following. A true and correct copy of said report and order is annexed to the complaint on file herein, and marked Exhibit "A"; and reference is hereby made to said report for further particulars.

VI.

That the Interstate Commerce Commission issued and filed its Findings of Fact in said matter on the 12th day of March, 1928, which findings are reported in Vol. 140 I. C. C. page 171; that said Commission found that said rates of 86½¢, 96¢ and 96½¢ per hundred pounds charged and collected by said defendants on said shipments from said points of origin to said points of destination were unreasonable as to the plaintiff to the extent that they exceeded the following rates: 83¢ per 100 pounds from Southern California to Bowie, Arizona; 93¢ per 100 pounds from Northern California to Bowie,

Arizona; 75¢ per 100 pounds from Southern California to Bowie, Arizona; 84¢ per 100 pounds from Northern California points to Bowie, Arizona, from and after July 1, 1922, up to and including the 3d day of December, 1923; that said Commission further found in said findings that the plaintiff had been damaged in the amount of the difference between said rates paid by plaintiff and said rates found by said Commission in said proceedings to have been reasonable, and that plaintiff was entitled to reparation therefor on all said shipments, with interest thereon.

VII.

That the plaintiff has duly complied with all the requirements of said Interstate Commerce Commission as to the [199] proof necessary for the amount of said reparation.

VIII.

That on the 14th day of April, 1930, said Interstate Commerce Commission, in Docket No. 16742 and causes consolidated therewith, including said Docket No. 14140, duly made and published its order, directing and requiring the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, to pay to the plaintiff herein the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges collected by the defendants from plaintiff, said sum being the

amount of reparation on account of said unreasonable rate charged and collected by said defendants for transportation of said 31 carload shipments of sugar; said order further directing and requiring the defendant, Southern Pacific Company, to pay to the plaintiff herein the sum of $1,723.01, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges collected by the defendant from plaintiff, said sum being the amount of reparation on account of said unreasonable rate charged and collected by said defendant for transportation of said carload shipments of sugar;

IX.

That the defendants failed and refused to comply with said order to pay said reparation, or any part thereof, though request was made by the plaintiff upon said defendants for payment of same.

X.

That said freight rates charged and collected, as aforesaid, were unjust, unreasonable and excessive as to said plaintiff, and in violation of the Interstate Commerce [200] Act.

XI.

That the just and reasonable freight rates which should have been charged on all said 31 carload shipments from said points of origin in California to said point of destination in Ari-

zona, from and after July 1, 1922, were 93¢ and 84¢ per 100 pounds from points in Northern California and 83¢ and 75¢ per 100 pounds from points in Southern California;

XII.

That by reason of the said unreasonable rates and charges and the payment thereof by plaintiff, and by reason of the refusal of the defendants to pay said reparation in pursuance of said order made by said commission, plaintiff has been damaged by said defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, in the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $46.89; and said plaintiff has been damaged by said defendant, Southern Pacific Company, in the sum of $1,723.01, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $1,136.24;

XIII.

That plaintiff herein has been compelled to employ an attorney at law to prosecute the present action to collect said reparation so

awarded by said commission, and that [201] 20% of the total amount found due, including principal and interest, is a reasonable sum to be allowed as attorney's fees.

CONCLUSIONS OF LAW

I.

That said order of the Interstate Commerce Commission, dated April 14, 1930, made and entered in that certain proceeding before said commission, entitled Traffic Bureau of Phoenix Chamber of Commerce, et al., vs. Atchison, Topeka & Santa Fe Railway Company, et al., Docket No. 16742 and causes consolidated therewith, including Docket No. 14140, which said order required said defendants to pay to the plaintiff herein certain sums of money as set forth in said order and in plaintiff's complaint, was, and is, a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause, and was within the power and jurisdiction conferred on said Interstate Commerce Commission in said cause by law, and that in the making of said order said Commission acted within its jurisdiction and power.

II.

That the rates of 96½¢, 96¢, and 96½¢ per 100 pounds charged the plaintiff by the defendants from Dyer, Oxnard, Spreckles, San Francisco, Crockett and Betteravia, California, to

Bowie, Arizona, between the 29th day of July, 1921, and the 3d day of December, 1923, inclusive on said 31 carload shipments of sugar, as shown on Exhibit "B" attached to plaintiff's complaint, were found by the Interstate Commerce Commission in said proceedings, Docket No. 16742 and causes consolidated therewith, including Docket 14140, unreasonable to the extent that said rates exceeded 93¢, 84¢, 83¢ and 75¢ per 100 pounds from said points of [202] origin to said points of destination between said dates, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines were 93¢ and 84¢ per 100 pounds from Northern California, and 83¢ and 75¢ per 100 pounds from Southern California, to Bowie, Arizona, from and after July 1, 1922.

III.

That by reason of said unreasonable charges the plaintiff has been damaged and the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, are jointly and severally indebted to the plaintiff in the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $46.89, making a total of principal and interest of the sum of $127.99; together with 20% of said total sum,

including principal and interest, as and for attorney's fees, amounting to the sum of $25.59; and the defendant, Southern Pacific Company, is indebted to the plaintiff in the sum of $1,-723.01, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $1,136.24; together with 20% of said total sum, including principal and interest, as and for attorney's fees, amounting to the sum of $571.85, together with plaintiff's costs and disbursements herein expended, and that plaintiff is entitled to judgment therefor.

Dated this 8th day of June, 1933.

F. C. JACOBS,
Judge. [203]

Thereupon defendants did by their counsel in open court, duly except to the findings of fact and conclusions of law of the Court in the following particulars, to wit:

Defendants excepted to paragraph VI of the Court's findings of fact on the ground that the same was and is not sufficiently clear and definite, and was and is not sustained nor supported by the evidence, nor in accord with the evidence and the law.

Defendants excepted to paragraph VII of the Court's findings of fact for the reason that the

same was and is not sustained nor supported by the evidence, and was and is contrary to the evidence and the law, and was and is not sufficiently clear and definite.

Defendants excepted to paragraph VIII of the Court's findings of fact on the ground that the same was and is not sustained nor supported by the record and the evidence, and is contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear, definite and concise.

Defendants excepted to paragraph X of the Court's findings of fact upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph XI of the Court's findings of fact on the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph XII of the Court's findings of fact upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph XIII of the Court's findings of fact upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law. [204]

Defendants excepted to paragraph I of the Court's conclusions of law upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law.

Defendants excepted to paragraph II of the Court's conclusions of law upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear, definite and certain.

Defendants excepted to paragraph III of the Court's conclusions of law upon the ground that the same was and is not sustained nor supported by the evidence, and was and is wholly contrary to the evidence and the law, and upon the further ground that the same was and is not sufficiently clear and definite.

Thereafter and on the 8th day of June, 1933, the Court's written findings of fact and conclusions of law as aforesaid were filed in said cause; and thereupon and on the 9th day of June, 1933, the Court, upon motion of plaintiff's attorneys, ordered judgment to be rendered and entered in said cause in favor of the plaintiff and against defendants, which said judgment was and is, in words and figures, as follows:

(Title of Court and Cause)

No. L-763-Phoenix.

JUDGMENT

This cause having come on regularly to be

heard on the 12th day of October, 1932, Samuel White appearing as counsel for the plaintiff, Solomon-Wickersham Company, and Baker & Whitney, Chalmers, Fennemore & Nairn, James E. Lyons and Burton Mason, having appeared as counsel for the defendants, Santa Maria Valley Railroad Company, and Southern Pacific Company; and it having appeared that a stipulation containing an express waiver of the right to [205] trial by jury had been signed by all the parties and filed herein; and evidence, both oral and documentary, having been introduced by the parties hereto, and both sides having rested; and said cause having been argued on behalf of the plaintiff and on behalf of the defendants, and the court having requested the plaintiff and defendants to file briefs on the matters and questions involved; and said cause having been submitted to the court for its consideration and decision;

And on the 17th day of January, 1933, the Court having heard evidence and testimony as to the reasonableness of attorney's fees to be allowed the plaintiff herein for the services rendered herein by its attorney in the trial and determination hereof to the date of this judgment as provided by law;

And on the 12th day of May, 1933, Findings of Fact and Conclusions of Law having been filed and settled by the court, as requested by the parties hereto, and the court having ordered that, in accordance with said findings of fact

and conclusions of law, judgment be entered in favor of the plaintiff and against the defendants in said cause, filed herein, together with costs of plaintiff herein incurred;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid;

It is ORDERED, ADJUDGED and DECREED, that the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, and each of them, are indebted to the plaintiff in the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges collected by the defendants from plaintiff, as shown on Exhibit "B", attached to plain- [206] tiff's complaint, down to and including the date hereof, amounting to the sum of $46.89, making a total of principal and interest of the sum of $127.99; together with 20% of said total sum, including principal and interest, as and for attorney's fees, amounting to the sum of $25.59; and that the defendant, Southern Pacific Company, is indebted to the plaintiff in the sum of $1,723.01, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $1,136.24; together with 20% of said total sum, including principal and interest, to wit, $2,859.25, as and for attorney's fees, said attorney's fees amount-

ing to the sum of $571.85; together with the sum of $15.90 taxed and allowed as plaintiff's costs and disbursements herein expended.

DONE AND DATED this 9th day of June, 1933.

Defendants, by their counsel, then and there duly excepted to said order for judgment, and to said judgment of the Court, and to every part and portion thereof.

Thereafter, and on or about the 10th day of June, 1933, plaintiff, by its counsel, filed and served a statement of costs, together with a notice of the time and place of application to tax costs; and in said statement said plaintiff claimed as attorney's fees, to be taxed and allowed by the Court herein the sum of $626.56, and as expense of securing from the Interstate Commerce Commission certified copies of Rule V statements, report, and findings, and order of reparation, the sum of $3.90.

Thereafter, on the 16th day of June, 1933, defendants, by their counsel, filed written objections and exceptions to said items of attorneys' fees, and of expense of obtaining said certified copies of documents from said Commission. Thereafter, and on [207] the 17th day of June, 1933, the Clerk of said Court and the Judge thereof, over said objections of defendants, did allow said items as proper items of costs, to which ruling and order the defendants then and there duly excepted.

Within the time allowed by law, as extended by stipulation of the parties, and by order of the Court,

this Bill of Exceptions was served on counsel for the plaintiff and was filed herein.

It is hereby certified that the foregoing Bill of Exceptions tendered by the defendants is complete and correct in every particular, and contains all of the evidence and testimony offered and/or admitted upon proceedings had at any and all hearings in the above entitled cause, together with all of the rulings of the Court in said proceedings, and all of the exceptions allowed; and

Said Bill of Exceptions is hereby certified, settled, and signed as correct in all respects and presented in due time this 9th day of October, 1933.

F. C. JACOBS
United States District Judge. [208]

STIPULATION

IT IS HEREBY STIPULATED, between counsel for the parties to the above-entitled action, that the foregoing Bill of Exceptions, as tendered to the Court by defendants, was presented in time, and is true and correct, and has been duly served upon the plaintiff; and that the same may be settled, allowed, certified and signed by the Court without amendment.

Dated at Phoenix, Arizona, this 5th day of October, 1933.

FRANK L. SNELL, JR.
SAMUEL WHITE
Counsel for Plaintiff.
BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
JAMES E. LYONS
BURTON MASON
Counsel for Defendants.

[Endorsed]: Filed Oct. 9, 1933. [209]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF MONDAY, OCTOBER 9, 1933

Defendants' Bill of Exceptions is now presented to the Court by Alexander B. Baker, Esquire, of counsel for said Defendants, and upon stipulation of respective counsel on file herein,

IT IS ORDERED that said Defendants' Bill of Exceptions be, and the same is hereby settled and allowed. [210]

[Title of Court and Cause—Consolidated Cases.]

PETITION FOR APPEAL

Now come Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, defendants in the above entitled cause, and say that on or about the 9th day of June, 1933, judgment in said cause was rendered by this Court in favor of the plaintiff, Solomon-Wickersham Company, a corporation, and against said defendants, Southern Pacific Company and Santa Maria Valley Railroad Company by which said defendants were aggrieved; that in said judgment, and the proceedings had prior and subsequent thereto in said cause, certain errors were committed to the prejudice of said defendants, all of which fully appears in detail from the Assignments of Error filed with this petition.

WHEREFORE, said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, hereby pray that an appeal may be allowed to them to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, and that citation on appeal issue as provided by law; and that a duly authenticated transcript of the record, proceedings and all papers and documents herein may be sent to the United States

Circuit Court of Appeals for the Ninth Circuit, pursuant to law and the rules of said Court in such cases made and provided; and said defendants further pray this Court to [211] fix the amount of the cost and supersedeas bond to be given by the defendants in said cause; and that such other and further proceedings may be had as shall be proper in the premises.

Dated at Phoenix, Arizona, this 5th day of September, 1933.

BAKER & WHITNEY
CHALMERS, FENNEMORE & NAIRN
JAMES E. LYONS
GERALD E. DUFFY
BURTON MASON
Attorneys for Defendants and Appellants.

[Endorsed]: Filed Sep. 5, 1933. [212]

[Title of Court and Cause—Consolidated Cases.]

ASSIGNMENTS OF ERROR.

The defendants in the above-entitled cause, Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, in connection with their petition for appeal in said cause, make the following assignments of error which they aver occurred upon the trial of said cause, or were committed by the Court in the findings of fact or in the conclusions of law, or in the rendition of judgment, or in other proceedings in said cause:

1.

The Court erred in overruling, and in failing to sustain, defendants' objection to Plaintiff's Exhibit 4, and in receiving said Exhibit 4 in evidence, for the reason that said exhibit was and is incompetent, irrelevant and immaterial, and no proper foundation had been established for the receipt thereof in evidence.

Said exhibit was and is, in words and figures, as follows: [213]

TO	(a) Average Distance	Rates Charged	2 Memphis-Southwestern Sugar Rates	3 120 Per Cent Memphis-Southwestern Sugar Rates	4 Rates Prescribed for Reparation Period	5 120 Per Cent Consolidated Southwestern Sugar Rates	6 Rates Prescribed for Future	7 Arbitraries	8 Rates in Column 3 Plus Arbitraries	9 Rates Prescribed for Reparation Period	10 Rates in Column 5 Plus Arbitraries	11 Rates Prescribed for Future
	(Miles)		(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)	(Cents)
			FROM SOUTHERN CALIFORNIA GROUP						FROM NORTHERN CALIFORNIA GROUP			
Group 1-												
Yuma	267	SEE	40	48	66	45½	46	20	68	66	65½	66
Group 2-												
Kingman	388		47	56	68	56½	57	12	68	69	68½	69
Group 4-												
Tucson		RULE										
Prescott	539		55	66	73	65	65	12	78	77	77	77
Williams												
Flagstaff		V										
Group 5-												
Winslow												
Bisbee		STATEMENTS										
Bowie	635		59	71	75	72	72	12	83	84	84	84
Douglas												
Holbrook												
Group 6-												
Safford	674		60	72	77	74½	75	12	84	87	86½	87
Group 7-												
Gallup												
Clifton	752		64	77	79	79	79	10	87	89	89	89
Globe												

REFERENCES

Column 1 See Rule V Statements (or reparation claims).
2 For rates see 77 I.C.C. 595.
3 Rates shown in 77 I.C.C. 595 plus 20 per cent.
4 140 I.C.C. 180
5 Rates shown in 123 I.C.C. 452, 477 plus 20 per cent.
6 140 I.C.C. 181.
7 Arbitraries added by Commission to the rates from Southern California Groups to make the through rates from Northern California Groups, 140 I.C.C. 181.
8 Memphis-Southwestern sugar rates plus 20 per cent plus arbitraries.
9 140 I.C.C. 180.
10 Consolidated Southwestern sugar rates plus 20 per cent plus arbitraries.
11 140 I.C.C. 181.
(a) See Docket 16742, 140 I.C.C. 171, at 178.

2.

The Court erred in receiving in evidence the following testimony offered through plaintiff's Witness, L. G. Reif, and in failing to sustain the objection of the defendants thereto, for the reason that the same was and is incompetent, irrelevant, not the best evidence of the facts asserted, and a mere expression of opinion not founded upon facts in evidence, no proper qualification of the witness having been established; the full substance of the testimony so received over defendants' said objection being as follows:

> "In the Consolidated Southwestern Cases rates on sugar were made on the basis of thirty per cent of the first-class rates. I have formed an opinion as to the reasonableness of the rates here in issue, basing my opinion upon the decision of the Interstate Commerce Commission in Docket No. 14999, and applying to the first-class rates prescribed in that case the percentage relationship employed in the Consolidated Southwestern Cases. Thirty per cent of the first-class rate prescribed in Docket No. 14999 from California points to Arizona would produce, for the distance of 961 miles representing the average from the San Francisco group to Bowie, Arizona, a rate of 90 cents. For reparation purposes the Commission in the instant case prescribed a rate of 84 cents. Taking the rates actually published by the carriers following the decision in Docket 14999, which were lower than were prescribed, because of the as-

serted water competition, and applying 30 per cent to those rates, the resulting rate on sugar from the San Francisco group to Bowie would be 80 cents."

3.

The Court erred in failing to sustain defendants' objection [216] to the following testimony offered through plaintiff's Witness L. G. Reif, and in admitting said testimony, over the objection of defendants, upon the ground that the same was and is incompetent, irrelevant and immaterial, and that the witness had established no proper qualification to offer such testimony, the full substance of the testimony so received over defendants' said objection being as follows: (The witness was asked by plaintiff's counsel whether he had in mind the comment made by the Commission in its decision in Docket 16742, 140 I. C. C. 171, in saying that the record in the First Phoenix Case, 62 I. C. C. 412, was not complete, and that a lower rate might have been justified upon a more comprehensive record.)

"A lower rate to Phoenix might have been justified upon a more comprehensive record in the First Phoenix Case. In the opinion in Docket 16742, at page 180, the Commission said that the prior record was incomplete, and that this was the first comprehensive record they had had. The record in the First Case was incomplete, because all that was asked for was a removal of discrimination."

4.

The Court erred in failing to grant, and in overruling, defendants' motion for a non-suit against plaintiff, and for the entry of an order dismissing the complaint, and for the entry of judgment against the plaintiff and in favor of the defendants, made at the conclusion of the plaintiff's testimony in chief, for the reason that plaintiff's said testimony showed affirmatively that it had no right to recover, in that its entire complaint was and is predicated upon an order for the payment of reparation made by the Interstate Commerce Commission, which said order was and is void and of no effect, because beyond the power and jurisdiction of said Commission; and for the further reason that the affirmative showing [217] made by the plaintiff demonstrated that the rates charged upon the shipments as to which reparation was and is demanded were not unjust, unreasonable, or otherwise unlawful at the time of their application.

5.

The Court erred in denying defendants' motion, made at the conclusion of the testimony, for the rendition and entry of judgment in favor of the defendants and against the plaintiff, upon the pleadings and the evidence, for the reason that such judgment in favor of defendants was and is sustained and justified by all the evidence, and justified and required by the law.

6.

The Court erred in finding and concluding that

a reasonable sum to be allowed as the fees of plaintiff's attorneys and counsel, on account of their services rendered in this cause, should be twenty per cent of the total amount recovered, and in rendering and entering its order allowing to plaintiff's attorneys said fee of twenty per cent of the total amount recovered; for the reason that said finding, conclusion and order, and each of them, are not sustained or supported by the evidence, and are contrary to the evidence and the law, particularly in that said amount so found by the Court to be reasonable as attorneys' fees is so clearly too large, in view of the services rendered, as to amount to an abuse by the Court of its discretion.

7.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 6. Thereafter, pursuant to said report, and in accordance with Rule V of the Rules of Practice of said Commission, plaintiff prepared the aforesaid Rule V statement showing the shipments upon which reparation was claimed, a copy of which is attached to the complaint herein, as Exhibit "B", [218] as heretofore set forth.

said requested findings being contained in paragraph 6 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issue.

8.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 7. Thereafter, under date of April 14th, 1930, said Commission made and entered its order directing and requiring said defendants to pay to the plaintiff, on or before May 31, 1930, as reparation and damages, the amounts set opposite their respective names in said order, with interest thereon at the rate of six (6) per cent per annum from the respective dates of the payment of charges as shown in said Rule V statements. A copy of said reparation order is annexed as Exhibit "C" to the complaint on file herein, and is hereby referred to for further particulars.

said requested findings being contained in paragraph 7 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

9.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 9. Under date of May 25, 1915, in response to a complaint attacking as unreasonable the rates on sugar in carloads from all points in California to all destinations in Arizona (including Bowie) said Commission, after full hearing and investigation, rendered its report

and order in a proceeding known and entitled as Docket No. 6806, Ariz. Corp. Comm. [219] v. A. T. & S. F. Ry. Co., et al., 34 I. C. C. 158. Reference is hereby made to said report of said Commission, as set forth in its official reports, for further particulars.

As more fully appears from said report, the complaint in said Docket No. 6806 was filed with the Commission on April 15, 1914. During the pendency of said proceeding the carriers named as defendants therein voluntarily reduced their rates on sugar from all points of origin in California to substantially all destinations in Arizona, including Bowie. Such voluntary reductions included in particular the establishment of rates on sugar, in carloads, from all said points in California to all said destinations in Arizona, subject to a minimum weight of 60,000 pounds per car, which rates were in all cases less than the rates theretofore applying from and to the same points in connection with a carload minimum weight of 36,000 pounds. In and by its said report in said Docket No. 6806 said Commission duly found, among other things, that said rates on sugar to Bowie, as voluntarily reduced during the pendency of said proceeding, were and in future would be just and reasonable. No order respecting said rates to Bowie was made by said Commission in said proceeding.

The character and extent of said voluntary reductions, and in particular of the reductions in the rates to Bowie, is fully set forth in said report in said Docket No. 6806.

said requested findings being contained in paragraph 9 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

10.

The Court erred in refusing to find the following facts, which [220] were requested by defendants, to-wit:

10. In compliance with the Commission's said findings in said Docket No. 6806, the carriers parties to the rates therein involved continued until and including December 29, 1917 the rates on sugar in carloads, from the several points in California to the destination in Arizona involved in this cause, which were in effect on said May 25, 1915. Upon said December 29, 1917, possession, control and operation of the railroad properties of the defendants and generally of all other railroad common carriers throughout the United States were assumed by the Director-General of Railroads, as Agent of the President of the United States, and said Director-General continued in such possession, control and operation until and including February 29, 1920. Said rates hereto-

fore last-mentioned were continued in effect by said Director-General from and after said December 29, 1917, until, but not including, June 25, 1918. On June 25, 1918, said Director-General caused said rates to be increased as specified and provided in General Order No. 28, issued by said Director-General pursuant to authority conferred by the Federal Control Act, 40 Stat. L. 456. Upon November 25, 1919, said rates, as modified by the changes made pursuant to said General Order No. 28, were further modified pursuant to and as provided by an order duly issued by said Director-General, styled "Freight Rate Authority No. 8016, dated May 16, 1919". Said order last mentioned, also issued pursuant to authority duly conferred by said Federal Control Act, brought about a general readjustment of rates on sugar throughout the western part of the United States. On February 29, 1920, said Director-General, by order duly made, further modified said rates heretofore mentioned by canceling the [221] rate from California points to Bowie, then and theretofore in effect, subject to a carload minimum weight of 36,000 pounds. The rate then and theretofore in effect from and to said points, subject to a carload minimum weight of 60,000 pounds, was continued without further modification until, but not including, August 26, 1920.

said requested findings being contained in paragraph 10 of defendants' proposed special findings

of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

11.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 11. On March 1st, 1920, upon termination of Federal control, the several defendants and other carriers resumed possession and control of their railroad properties. Said carriers, parties to the rates on sugar from California points to Bowie, maintained from and after said last mentioned date until, but not including, August 26, 1920, said rate on sugar subject to a carload minimum weight of 60,000 pounds which was in effect from and to said points at the date of termination of Federal control. On said date last mentioned said rate was increased to 96½ cents per hundred pounds, as authorized by the report and order of said Commission in the proceeding entitled Ex parte 74, Increased Rates 1920, 58 I. C. C. 220, to which report reference is hereby made for further particulars. Said report and order authorized general percentage advances in interstate freight rates throughout the United States.

said requested findings being contained in paragraph 11 of defendants' proposed special findings of fact, for the reason that said [222] proposed

findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

12.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

> 12. Said rate of 96½ cents, as made effective August 26, 1920, was voluntarily reduced by said defendants, effective July 27, 1921, to 96 cents; and was further voluntarily reduced by said defendants, effective July 1st, 1922, to 86½ cents. Said reduction last-mentioned was in conformity with the recommendations made by said Commission in its report in a proceeding entitled: Reduced Rates, 1922, 68 I. C. C. 676, to which report reference is hereby made for further particulars. Said rate of 86½ cents last-mentioned was further voluntarily reduced by said defendants, on or about January 11, 1924, to 84 cents. Said rates of 96½ cents, 96 cents, and 86½ cents, which were successively in effect during the period August 26, 1920, to January 10, 1924, both inclusive, were the rates assessed upon plaintiff's shipments during the period of movement thereof, as shown upon said Rule V statement annexed to the complaint herein, and are the rates referred to "As Charged" upon said statement.

said requested findings being contained in paragraph 12 of defendants' proposed special findings of fact, for the reason that said proposed findings

requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

13.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

13. On or about the 22nd day of June, 1921, and after full hearing and investigation, said Commission rendered [223] its report and order in a proceeding entitled Docket No. 11532, Traffic Bureau, Phoenix Chamber of Commerce, et al. v. Director General, et al., 62 I. C. C. 412 (to which report reference is hereby made for further particulars) wherein and whereby said Commission found, among other things, that the reasonable rate thereafter to be applied to the transportation of sugar in carloads, minimum weight 60,000 pounds, from points of origin in California (including the points of origin of the plaintiff's shipments involved herein) to Phoenix, Arizona, should not exceed 96½ cents per hundred pounds. The usual and customary routes of movement from said points of origin in California to Phoenix, Arizona, were at all times prior to November 1, 1926, identical with the direct routes of movement of shipments from said points to Bowie, Arizona, as far as and including Maricopa, Arizona, a point 35 miles by rail from Phoenix; and the distances over said routes of movement from said points of origin in California to Phoenix were at all

times during the period of movement of the plaintiff's shipment involved herein, 160 miles less than the corresponding distances from said points of origin to Bowie. Said order of said Commission in said proceeding last mentioned, Docket No. 11532, specified that said rate of 96½ cents should be observed as the reasonable maximum rate from California points to Phoenix until the further order of said Commission; and no further order with respect to said rate was made by said Commission during the period of movement of the plaintiff's shipments or until about February 25, 1925. During all of said period of movement said rate of 96½ cents was, and continued to be, the duly established and conclusive measure of [224] the just and reasonable rate on sugar from the points of origin in California involved herein to Phoenix and related points in Arizona, including Bowie.

said requested findings being contained in paragraph 13 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

14.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

14. On November 3, 1921, and after full hearing, said Commission rendered its report and order in a proceeding entitled Docket No. 11442, Traffic Bureau, Douglas Chamber of Commerce & Mines v. A. T. & S. F. Ry. Co., et al., 64 I. C. C. 405 (to which report of said Commission reference is hereby made for further particulars), in response to a complaint alleging, among other things, that the rates on sugar, in carloads, from points in California, including all of the points of origin of the plaintiff's shipments, to Douglas, Arizona, were and in future would be unreasonable and otherwise in violation of the Interstate Commerce Act. In said report said Commission found that said rate, which at the date of said complaint was 96½ cents per hundred pounds, was and in future would be not unreasonable. No further findings or order with respect to said rate to Douglas were made by said Commission subsequent to the report in said Docket No. 11442, until March 12, 1928, the date of the findings and order in said Docket No. 16742, and associated cases, to which reference has heretofore been made. The direct and actual routes of movement of plaintiff's shipments from points of origin in California to Bowie, Arizona, during all of the period of the movement thereof, were [225] identical with the direct routes over which shipments of sugar moved from said points of origin to Douglas, Arizona, as far as and including Tucson, Arizona, a point about

124 miles westerly from Douglas and about 115 miles westerly from Bowie; and the distances from said points of origin in California to Douglas, Arizona, were, during all of said times, less than 10 miles greater than the corresponding distances from said points of origin to Bowie. During all of the period of movement of the plaintiff's shipments, said rate of 96½ cents to Douglas, found reasonable by said Commission in its report in said Docket No. 11442, was and continued to be the duly established and conclusive measure of a just and reasonable rate for the transportation of shipments of sugar from the points of origin of plaintiff's shipments to Douglas and related points in Arizona, including Bowie in particular.

said requested findings being contained in paragraph 14 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

15.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

15. On June 27, 1923, after full hearing, and in response to a complaint alleging among other things that the rates on sugar in carloads from points in California, including the points of

origin of plaintiff's shipments, to destinations in Arizona on the Globe Division of the Arizona Eastern Railroad Company (now the Globe Branch of the Southern Pacific Company) were unreasonable and otherwise in violation of the Interstate Commerce Act, said Commission rendered its report and order in a proceeding [226] entitled Docket No. 13139: Graham & Gila Counties Traffic Assn. v. A. E. R. Co., et al., 81 I. C. C. 134. In said report said Commission found and declared that said rates, as in effect on January 18, 1922, were and in future would be not unreasonable and reference is hereby made to said report for further particulars. On said date, January 18, 1922, the rate on shipments of sugar in carloads from the points of origin of the plaintiff's shipments to Globe, Arizona, was $1.59 per hundred pounds; the corresponding rate on sugar from said points of origin to Safford, Arizona, was $1.29; both said points, Globe and Safford, being located upon said Globe Division, heretofore referred to. The direct routes from the points of origin of plaintiff's shipments to Globe and Safford, were, at all times involved in this cause, identical with the direct routes from said points of origin to Bowie, as far as, and including, Bowie itself; Bowie being the point of junction of said Globe Division of the Arizona Eastern with the main line of the Southern Pacific extending from Tucson, Arizona, via Bowie, to El Paso, Texas. At all

said times the distances from said points of origin to Globe and Safford were, respectively, 124 miles, and 40 miles, greater than to Bowie. During all said times said rates of $1.59 to Globe and $1.29 to Safford were, and continued to be, duly established and conclusive measures of the transportation services to which they respectively applied, and of similar transportation services over the same lines to related destinations.

said requested findings being contained in paragraph 15 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven [227] by the evidence, and were and are material to the issues.

16.

The Court erred in refusing to find the following facts, which were requested by defendants, to-wit:

16. The rates and charges assessed and collected upon the plaintiff's said shipments, as set forth upon said Rule V statement annexed to the complaint, were, and each of them was, just and reasonable, and in full conformity with the Interstate Commerce Act, and were, and each of them was, lawfully applied, assessed and collected by the said defendants.

said requested findings being contained in paragraph 16 of defendants' proposed special findings of fact, for the reason that said proposed findings requested by defendants were conclusively proven by the evidence, and were and are material to the issues.

17.

The Court erred in finding the following facts, which were requested by the plaintiff, to-wit:

VI.

That the Interstate Commerce Commission issued and filed its findings of fact in said matter on the 12th day of March, 1928, which findings are reported in Vol. 140 I. C. C. page 171; that said commission found that said rates of 86½¢, 96¢ and 96½¢ per hundred pounds charged and collected by said defendants on said shipments from said points of origin to said points of destination were unreasonable as to the plaintiff to the extent that they exceeded the following rates: 83¢ per 100 pounds from Southern California to Bowie, Arizona; 93¢ per 100 pounds from Northern California to Bowie, Arizona; 75¢ per 100 pounds from Southern California to Bowie, Arizona, 84¢ per 100 pounds from Northern California points to Bowie, [228] Arizona, from and after July 1, 1922, up to and including the 3d day of December, 1923; that said commission further found in said findings that the plaintiff had been damaged in the amount of the difference between said rates paid by plaintiff and said rates found by said commission in said proceedings to have been reasonable, and that plaintiff was entitled to reparation therefor on all said shipments, with interest thereon.

which are contained in paragraph VI of findings

of fact requested by plaintiff, and in paragraph VI of findings of fact adopted by the Court, for the reason that the same were and are not sufficiently clear and definite, and were and are not sustained or supported by the evidence, nor in accord with the evidence and the law.

18.

The Court erred in finding the following fact, which was requested by the plaintiff, to-wit:

VII.

> That the plaintiff has duly complied with all the requirements of said Interstate Commerce Commission as to the proof necessary for the amount of said reparation.

which is contained in paragraph VII of findings of fact requested by plaintiff, and in paragraph VII of findings of fact adopted by the Court, for the reason that the same is not sustained nor supported by competent evidence, and is contrary to the evidence and the law, and is not sufficiently clear and definite, there being no competent evidence whatsoever upon which to base such finding.

19.

The Court erred in finding the following facts, which were requested by the plaintiff, to-wit:

VIII.

> That on the 14th day of April, 1930, said Interstate Commerce Commission, in Docket No. 16742 and causes [229] consolidated therewith, including said Docket No. 14140, duly

made and published its order, directing and requiring the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, to pay to the plaintiff herein the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges collected by the defendants from plaintiff, said sum being the amount of reparation on account of said unreasonable rate charged and collected by said defendants for transportation of said 31 carload shipments of sugar; said order further directing and requiring the defendant, Southern Pacific Company, to pay to the plaintiff herein the sum of $1,723.01, together with interest thereon at the rate of six percent per annum from the respective dates of payment of the charges collected by the defendant from plaintiff, said sum being the amount of reparation on account of said unreasonable rate charged and collected by said defendant for transportation of said carload shipments of sugar.

which is contained in paragraph VIII of findings of fact requested by plaintiff, and in paragraph VIII of findings of fact adopted by the Court, for the reason that the said finding is not sustained or supported by the record or the evidence, and is contrary to the evidence and the law, and is not sufficiently clear, definite and concise.

20.

The Court erred in finding the following facts, which were requested by the plaintiff, to-wit:

X.

That said freight rates charged and collected, as aforesaid, were unjust, unreasonable and excessive as to said plaintiff, and in violation of the Interstate Com- [230] merce Act.

which are contained in paragraph X of findings of fact requested by plaintiff, and in paragraph X of the findings of fact adopted by the Court, for the reason that there is no competent evidence to sustain such findings, and the same are not supported by and are contrary to the evidence and the law; it having been affirmatively shown, by the admitted and uncontradicted evidence introduced by defendants, that the charges assessed and collected upon plaintiff's said shipments were just, reasonable and lawful, and were in fact less in amount than charges which would have accrued under a rate which had previously been declared to be just and reasonable, by a prior valid formal finding of the Interstate Commerce Commission, which rate was continued in effect throughout the period of movement of plaintiff's shipments, subject only to changes authorized and/or required by the Commission itself or by the President of the United States acting through the Director-General of Railroads.

21.

The Court erred in finding the following fact, which was requested by the plaintiff, to-wit:

That the just and reasonable freight rates which should have been charged on all said 31 carload shipments from said points of origin in

California to said point of destination in Arizona, from and after July 1, 1922, were 93¢ and 84¢ per 100 pounds from points in Northern California and 83¢ and 75¢ per 100 pounds from points in Southern California.

which is contained in paragraph XI of findings of fact requested by plaintiff, and in paragraph XI of findings of fact adopted by the Court, for the reason that the same is not sustained or supported by the evidence, and was and is wholly contrary to the [231] evidence and the law, and was and is not sufficiently clear and definite.

22.

The Court erred in finding the following facts, which were requested by the plaintiff, to-wit:

XII.

That by reason of said unreasonable rates and charges and the payment thereof by plaintiff, and by reason of the refusal of the defendants to pay said reparation in pursuance of said order made by said commission, plaintiff has been damaged by said defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, in the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $46.89; and said plaintiff has been damaged by said defendant, Southern Pacific Com-

pany, in the sum of $1,723.01, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $1,136.24.

which are contained in paragraph XII of findings of fact requested by plaintiff, and in paragraph XII of findings of fact adopted by the Court for the reason that such findings are not sustained nor supported by the evidence and are contrary to the evidence and the law, in that there is no competent evidence to show that any unreasonable rates and/or charges were ever collected by the defendants from the plaintiff, or paid by the plaintiff to the defendants or any of them, or that any of the defendants have ever refused to [232] pay any reparation properly and lawfully awarded by the Interstate Commerce Commission to plaintiff, or that plaintiff has ever been damaged by reason of the collection of the rates and charges referred to in the complaint herein.

23.

The Court erred in finding the following facts, which were requested by the plaintiff, to-wit:

XIII.

That plaintiff herein has been compelled to employ an attorney at law to prosecute the present action to collect said reparation so awarded by said Commission, and that 20% of

the total amount found due, including principal and interest, is a reasonable sum to be allowed as attorney's fees.

which are contained in paragraph XIII of findings of fact requested by plaintiff, and in paragraph XIII of findings of fact adopted by the Court, for the reasons that such findings are not sustained or supported by the evidence, and are contrary to the evidence and the law; and for the further reason that the amount so found by the Court to be reasonable as an attorney's fee in this cause is so clearly too large, in view of the services rendered as to amount to an abuse of discretion by the Court.

24.

The Court erred in making the following conclusion of law, which was requested by plaintiff, to-wit:

I.

That said order of the Interstate Commerce Commission, dated April 14, 1930, made and entered in that certain proceeding before said Commission, entitled Traffic Bureau of Phoenix Chamber of Commerce, et al. vs. Atchison, Topeka & Santa Fe Railway Company, et al., Docket No. 16742 and causes consolidated therewith, including Docket No. 14140, which [233] said order required said defendants to pay to the plaintiff herein certain sums of money as set forth in said order and in plaintiff's complaint, was, and is, a legal, valid and binding order and was made and entered by said Interstate Commerce Commission in said cause, and was

within the power and jurisdiction conferred on said Interstate Commerce Commission in said cause by law, and that in the making of said order said Commission acted within its jurisdiction and power.

which is contained in paragraph I of the conclusions of law requested by plaintiff, and in paragraph I of the conclusions of law adopted by the Court, for the reason that such conclusion is not sustained or supported by competent evidence, and is contrary to the evidence and the law, in that the evidence shows without conflict that said purported order of said Commission, dated April 14th, 1930, undertakes to require defendants to pay reparation for the collection of rates and charges which were in all respects just, reasonable and lawful, and were duly and lawfully published and assessed in conformity with prior valid findings made by said Commission, and were less in amount than a rate previously prescribed and/or approved as reasonable by said Commission, which were continued and maintained throughout the period of movement of plaintiff's shipments, subject only to changes made by authority of the Director-General of Railroads, as Agent of the President of the United States, and/or of said Commission.

25.

The Court erred in making the following conclusion of law which was requested by plaintiff, to-wit:

II.

That the rates of 86½¢, 96¢, and 96½¢ per 100 pounds charged the plaintiff by the defendants

> from Dyer, Oxnard, Spreckles, San Francisco, Crockett and Betteravia, Cali- [234] fornia, to Bowie, Arizona, between the 29th day of July, 1921, and the 3d day of December, 1923, inclusive, on said 31 carload shipments of sugar, as shown on Exhibit "B" attached to plaintiff's complaint, were found by the Interstate Commerce Commission in said proceedings, Docket No. 16742 and causes consolidated therewith, including Docket 14140, unreasonable to the extent that said rates exceeded 93¢, 84¢, 83¢ and 75¢ per 100 pounds from said points of origin to said points of destination between said dates, and that the reasonable rate which should have been charged the plaintiff on account of said shipments over defendants' lines were 93¢ and 84¢ per 100 pounds from Northern California, and 83¢ and 75¢ per 100 pounds from Southern California, to Bowie, Arizona, from and after July 1, 1922.

which is contained in paragraph II of conclusions of law requested by plaintiff, and in paragraph II of conclusions of law adopted by the Court, for the reason that such conclusion is not sustained or supported by the evidence, and is contrary to the evidence and the law, and for the reasons hereinbefore assigned in connection with assignments of errors Nos. 20, 22 and 24.

26.

The Court erred in finding the following conclusion of law, which was requested by the plaintiff, to-wit:

III.

That by reason of said unreasonable charges the plaintiff has been damaged and the defendants, Southern Pacific Company and Santa Maria Valley Railroad Company, are jointly and severally indebted to the plaintiff in the sum of $81.10, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, [235] amounting to the sum of $46.89, making a total of principal and interest of the sum of $127.99; together with 20% of said total sum, including principal and interest, as and for attorney's fees, amounting to the sum of $25.59; and the defendant, Southern Pacific Company, is indebted to the plaintiff in the sum of $1,723.01 together with interest thereon at the rate of six per cent per annum from the respective dates of payment of said charges, as shown on said Exhibit "B", attached to plaintiff's complaint, down to and including the date hereof, amounting to the sum of $1,136.24; together with 20% of said total sum, including principal and interest, as and for attorney's fees, amounting to the sum of $571.85, together with plaintiff's costs and disbursements herein expended, and that plaintiff is entitled to judgment therefor.

which is contained in paragraph III of conclusions of law requested by plaintiff, and in paragraph III of conclusions of law adopted by the Court, for

the reasons that such conclusion is not sustained or supported by the evidence and is contrary to the evidence and the law, and for the particular reasons hereinbefore assigned in connection with assignments of errors Nos. 20, 22, 24 and 25.

27.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants as paragraph 1 of their requested conclusions of law, to-wit:

> 1. The rates and charges assessed and collected upon plaintiff's said shipments of sugar, as shown and set forth in said Rule V statement annexed as Exhibit "B" to the complaint herein, were published, applied and collected by authority of the Interstate Commerce Commission, and had previously been declared by said Commission to be not un- [236] reasonable, after full formal investigation, and/or were less in amount than rates which had previously been declared by said Commission to be reasonable after such investigation, subject only to intervening modifications authorized and/or required by the United States, acting through the Director-General, as the agent of the President, and/or the Interstate Commerce Commission.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in the cause.

28.

The Court erred in failing and refusing to make

the following conclusion of law, which was requested by defendants as paragraph 2 of their requested conclusions of law, to-wit:

> 2. Said order of said Interstate Commerce Commission, dated April 14, 1930, and purporting to direct and require said defendants to pay reparation to the plaintiff with respect to its said shipments shown on said Rule V statement, was and is in excess of the lawful jurisdiction of said Commission and therefore was and is null and void and of no effect.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in the cause.

29.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants as paragraph 3 of their requested conclusions of law, to-wit:

> 3. Plaintiff has failed to establish by the evidence any cause of action whatever against the defendants or either or any of them; and has failed to establish that [237] any unreasonable or otherwise unlawful rate or charge was collected upon any of the said shipments, or that any reparation whatsoever is due or payable with respect to said shipments or any of them.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in the cause.

30.

The Court erred in failing and refusing to make the following conclusion of law, which was requested by defendants as paragraph 4 of their requested conclusions of law, to-wit:

> 4. Plaintiff is not entitled to recover any amount whatsoever as fees of its attorneys and counsel in said cause; defendants are entitled to judgment against the plaintiff, that the plaintiff take nothing by its action, and that the complaint herein be dismissed.

for the reason that such conclusion is established by uncontradicted testimony, and conforms to and is justified and required by the evidence and the law, and is material to the issues in the cause.

31.

The Court erred in failing to render and enter judgment in favor of defendants and against the plaintiff, predicated upon the findings of fact and conclusions of law proposed and requested by defendants, for the reason that such judgment in favor of the defendants is justified and required by all the evidence and the law; and for the further reasons hereinbefore assigned, particularly in connection with Assignments of Error Nos. 6 to 16, inclusive, and 27 to 30, inclusive.

32.

The Court erred in rendering and ordering judgment, upon the facts found, in favor of plaintiff and against the defendants, and in refusing to render and enter such judgment in favor of the [238] de-

fendants, for the reason that the facts as found by the Court are not sufficient to support the judgment in favor of the plaintiff; in that said judgment is based solely upon the theory that the Interstate Commerce Commission, on April 14, 1930, issued a lawful, valid and binding order directing said defendants to pay to the plaintiff certain sums as reparation for the collection of alleged unreasonable rates and charges upon carload shipments of sugar from points in Califorina to Bowie, Arizona, moving during the period April 4, 1921, to December 3, 1923, both inclusive; whereas the uncontradicted testimony shows that the rates assessed and the charges collected by said defendants for the transportation of said shipments were duly and regularly published, applied and collected by authority of said Commission, and were equal to, or less than, rates which had previously been prescribed and/or approved as reasonable by prior formal findings of said Commission, which said rates as so prescribed and/or approved had been maintained in effect, without modification other than general changes duly authorized and/or required by the United States, acting through the Director-General of Railroads as the Agent of the President, and through said Commission; and said order of said Commission purporting to award reparation is therefore void and of no effect, because in excess of the jurisdiction conferred by law upon said Commission: and for the further reason that said rates and charges collected upon plaintiff's said shipments were conclusively shown, by uncontradicted testimony, to

have been and to be just, reasonable, and otherwise in conformity with law at the times of their assessment and collection.

WHEREFORE, defendants pray that the judgment of the District Court in the above-entitled cause may be reversed.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
JAMES E. LYONS,
GERALD E. DUFFY,
BURTON MASON,
Attorneys for Defendants. [239]

[Endorsed]: Filed Sep. 5, 1933. [240]

[Title of Court and Cause—Consolidated Cases.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST AND/OR SUPERSEDEAS BOND

On the 5th day of September, 1933, the above entitled defendants, by their attorneys, filed herein and presented to this Court their Petition for the Allowance of an Appeal in said Cause, together with assignments of error intended to be urged by them, praying also that a duly authenticated transcript of the record, proceedings and all papers and documents upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that citation issue; and further praying that this Court fix the amount of the cost and/or supersedeas bond to be given by said defendants in this cause; and that

such other and further proceedings be had as may be proper in the premises:

NOW, THEREFORE, upon consideration thereof, this Court does hereby allow said appeal as prayed for, and does hereby fix the amount of the cost and/or supersedeas bond in the sum of Forty-five Hundred Dollars ($4500.00), and does hereby order that such bond shall operate as a supersedeas bond.

Dated this 5th day of September, 1933.

F. C. JACOBS
Judge of the United States District Court,
for the District of Arizona. [241]

[Endorsed]: Filed Sep. 5, 1933. [242]

[Title of Court and Cause—Consolidated Cases.]

BOND

KNOW ALL MEN BY THESE PRESENTS: That Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, as principals, and Pacific Indemnity Company, a corporation, as surety are held and firmly bound unto Solomon-Wickersham Company, a corporation, plaintiff in the above entitled action, in the full and just sum of Forty-five Hundred ($4500.00) Dollars, to be paid to said Solomon-Wickersham Company, its successors or assigns; for the payment of which sum well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and sealed this 5th day of September, 1933.

The condition of this obligation is such that whereas a certain judgment and decision in the above entitled cause was rendered in favor of said plaintiff, Solomon-Wickersham Company, a corporation, and against said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, on or about the 9th day of June, 1933, by the Honorable F. C. Jacobs, presiding Judge of the above entitled cause and court, and whereas, the said defendants, Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, after the entry and filing of said [243] judgment duly filed and presented to the above entitled court their petition, praying for the allowance of an appeal for the review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, for the purpose of reversing said judgment, and said appeal was allowed by the said Honorable F. C. Jacobs, presiding Judge of the United States District Court for the District of Arizona, upon the said defendants giving bond, according to law, in the sum of Forty-five Hundred ($4500.00) Dollars, which said bond shall operate as a supersedeas bond.

NOW, THEREFORE, if the said Southern Pacific Company, a corporation, and Santa Maria Valley Railroad Company, a corporation, defendants above named, shall prosecute their said appeal to effect and shall pay the amount of said judgment and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise it shall remain in full force and effect.

And the said surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond the United States District Court for the District of Arizona may, upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and to order execution therefor. [244]

IN WITNESS WHEREOF, the undersigned have executed this bond this said 5th day of September, 1933.

SOUTHERN PACIFIC COMPANY,
a Corporation,
[Corporate Seal]
By J. H. Dyer
Its Vice President

Attest:
G. L. KING
Its Asst. Secretary

SANTA MARIA VALLEY RAILROAD COMPANY, a Corporation,
[Corporate Seal]
By Raymond W. Stephens
Its Vice President

Attest:
LEROY E. SULLIVAN
Its Secretary

PRINCIPALS.

PACIFIC INDEMNITY COMPANY
By D. Ray Kleinman [Seal]
[Seal] Attorney-in-Fact.

SURETY.

The above bond and surety approved this 5th day of Sept., 1933.

F. C. JACOBS
Judge of the United States District Court
for the District of Arizona. [245]

[Title of Court and Cause—Consolidated Cases.]

MINUTE ENTRY OF TUESDAY, SEPTEMBER 5, 1933

Come now the Defendants by their counsel, Messrs. Baker and Whitney, and present to the Court their bond on appeal, executed on the 5th day of September, 1933, in the sum of Forty-five Hun-dred Dollars ($4500.00), with Pacific Indemnity Company, a corporation, as surety thereon, and

IT IS ORDERED that said bond be and the same is hereby accepted and approved. [248]

[Title of Court and Cause—Consolidated Cases.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above entitled Court and to Messrs. Samuel White and F. L. Snell, Jr., attorneys for Plaintiff and Appellee:

You and each of you are hereby notified that the transcript of record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal heretofore filed

and allowed in the above entitled cause, shall contain properly certified copies of the following papers, proceedings and documents, which defendants and appellants aver to be necessary to a determination of said cause in said appellate court, to-wit:

1. The summons and return in said cause;
2. The complaint;
3. The amended answer to the complaint;
4. The special findings of fact and conclusions of law requested by the plaintiff;
5. The stipulation waiving a jury trial;
6. Defendants' proposed amendments and additions to plaintiff's requested special findings of fact and conclusions of law;
7. Special findings of fact and conclusions of law requested by defendants; [249]
8. Special findings of fact and conclusions of law made and adopted by the Court;
9. Stipulation for the incorporation by reference in the special findings of fact adopted by the Court of Exhibit "B" annexed to the complaint;
10. The judgment;
11. Plaintiff's memorandum of costs and disbursements, together with notice of application to tax costs;
12. Defendants' exceptions to plaintiff's memorandum of costs and disbursements;
13. All minute entries of the Clerk;
14. The bill of exceptions;
15. The petition for appeal;
16. The assignments of error;

17. The order allowing appeal and fixing amount of costs and/or supersedeas bond;

18. The supersedeas and appeal bond, and approval thereof;

19. The citation on appeal;

20. This praecipe;

21. Clerk's certificate.

Dated this 6th day of September, 1933.

BAKER & WHITNEY,
CHALMERS, FENNEMORE & NAIRN,
JAMES E. LYONS,
GERALD E. DUFFY,
BURTON MASON,
Attorneys for Defendants and Appellants.

Received copy of the within Praecipe this 6th day of September, 1933.

SAMUEL WHITE,
F. L. SNELL, JR.,
ELLIOTT & SNELL,
Attorneys for Plaintiff.

[Endorsed]: Filed Sep. 6, 1933. [250]

[Title of Court and Cause—Consolidated Cases.]

ORDER ENLARGING TIME FOR FILING AND DOCKETING IN CIRCUIT COURT OF APPEALS.

THIS MATTER coming on this 29th day of September, 1933, and it appearing that appeal has been allowed in the above case, transferring the same to

the United States Circuit Court of Appeals for the Ninth Circuit for review; and it appearing to the satisfaction of the Court that the Clerk of the above Court will be unable to complete the preparation of the transcript of record in the above case within the thirty day period limited in the citation, and that there is good cause for enlarging and extending the time for filing and docketing the case in the said Circuit Court of Appeals;

NOW, THEREFORE, it is hereby ORDERED that the time for the filing of the record in the above case, and docketing said cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to Nov. 1, 1933.

Dated: September 29, 1933.

F. C. JACOBS,
Judge. [251]

[Endorsed]: Filed Sep. 29, 1933. [252]

[Title of Court and Cause—Consolidated Cases.]

ORDER ENLARGING TIME FOR FILING AND DOCKETING IN CIRCUIT COURT OF APPEALS.

THIS MATTER coming on this 20th day of October, 1933, and it appearing that appeal has been allowed in the above case, transferring the same to the United States Circuit Court of Appeals for the Ninth Circuit for review; and it appearing to the satisfaction of the Court that there is good cause for

enlarging and extending the time for filing and docketing the case in the said Circuit Court of Appeals;

NOW, THEREFORE, it is hereby ORDERED that the time for the filing of the record in the above case, and docketing said cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby enlarged and extended to December 1, 1933.

Dated: October 20, 1933.

F. C. JACOBS,
Judge.

[Endorsed]: Filed Oct. 20, 1933. [253]

In the United States District Court for the District of Arizona.

United States of America,
District of Arizona.—ss.

I, J. Lee Baker, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Solomon-Wickersham Company, a corporation, Plaintiff, versus Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, Defendants, numbered L-763-Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 257 inclusive, contain a full, true and

correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the city of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of $45.25 and that said sum has been paid to me by counsel for the appellant.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the Seal of the said Court this 24th day of November, 1933.

[Seal] J. LEE BAKER,
Clerk. [254]

[Title of Court and Cause—Consolidated Cases.]

CITATION ON APPEAL

To Solomon-Wickersham Company, a corporation, plaintiff above named, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, within thirty (30) days from the date hereof pursuant to an

appeal, and/or order allowing appeal, filed in the office of the Clerk of the United States District Court, for the District of Arizona, wherein Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, are appellants, and you are appellee, to show cause, if any there be, why the judgment rendered against said Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable F. C. Jacobs, Judge of the United States District Court for the District of Arizona, this 5th day of September, 1933.

[Seal] F. C. JACOBS
Judge of the United States District Court, for the District of Arizona. [255]

Service of the within Citation on Appeal, and receipt of a copy thereof is hereby admitted this 6th day of September, 1933. Service is also admitted, and receipt is acknowledged, as of this date, of copies of Petition for Appeal, Order Allowing Appeal and Fixing Amount of Cost and/or Supersedeas Bond, Assignments of Error, and Bond, all having to do with the above entitled and numbered cause.

SAMUEL WHITE
F. L. SNELL, JR.
Attorneys for Solomon-Wickersham Company plaintiff and appellee. [256]

[Endorsed]: Filed Sep. 6, 1933.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7342

SANTA MARIA VALLEY RAILROAD COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation,

Defendants and Appellants,

vs.

SOLOMON-WICKERSHAM COMPANY, a corporation,

Plaintiff and Appellee.

STATEMENT BY APPELLANTS OF PARTS OF RECORD NECESSARY TO BE PRINTED.

To HONORABLE PAUL P. O'BRIEN, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to MESSRS. SAMUEL WHITE and F. L. SNELL, JR., Attorneys for plaintiff and appellee:

I.

Defendants and appellants herein state that in the review of the above cause by the United States Circuit Court of Appeals for the Ninth Circuit they intend to rely upon alleged errors committed by the trial court as follows, to wit:

1. Errors of the trial court in the admission and/or exclusion of evidence upon the trial of said cause.

2. Errors of the trial court in its findings of fact and conclusions of law.
3. Errors of the trial court in refusing to make findings of fact and conclusions of law requested by the defendants and appellants.
4. Errors of the trial court in rendering judgment in favor of the plaintiff and appellee and against the defendants and appellants.

II.

Defendants and appellants also state that for the proper consideration of said alleged errors they think it necessary to print the following parts and portions of the transcript of record certified and filed by the Clerk of the United States District Court for Arizona with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

All of said transcript of record, save and except the following:

The minute order of May 29, 1933, appearing upon page 30 of said transcript;

The order extending the defendants' time to answer, dated December 6, 1930, appearing on page 33 of said transcript;

The minute entry of December 22, 1930, appearing on page 34 of said transcript;

The minute entries of March 23, 1931, December 28, 1931, and February 15, 1932, appearing on pages 36, 37, and 38, respectively, of said transcript;

Defendants' proposed findings of fact and conclusions of law, appearing at pages 76 to 86, inclusive, of said transcript;

The findings of fact and conclusions of law made and adopted by the trial court, appearing on pages 92 to 99, inclusive, of said transcript;

The judgment in said cause, appearing on pages 100 and 101 of said transcript;

The power of attorney issued by Pacific Indemnity Company, surety upon the bond on appeal, to its agent and attorney in fact for the State of Arizona, appearing at page 246 of said transcript.

Dated at San Francisco, California, this 29th day of November, 1933.

BAKER & WHITNEY
JAMES E. LYONS
BURTON MASON
Attorneys for Defendants and Appellants.

[Endorsed]: Service of the within Statement by Appellants of Parts of Record Necessary to be Printed is admitted this 4th day of Dec., 1933.

SAMUEL WHITE,
F. L. SNELL, JR.,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Dec. 6, 1933. Paul P. O'Brien, Clerk.

[Endorsed]: No. 7342. United States Circuit Court of Appeals for the Ninth Circuit. Santa Maria Valley Railroad Company, a corporation, and Southern Pacific Company, a corporation, Appellants, vs. Solomon-Wickersham Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed November 27, 1933.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.